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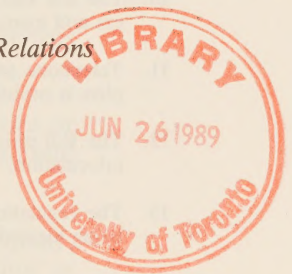


# Bill 30

## An Act respecting Funeral Directors and Establishments

The Hon. W. Wrye

*Minister of Consumer and Commercial Relations*



*1st Reading*      June 12th, 1989  
*2nd Reading*  
*3rd Reading*  
*Royal Assent*

## EXPLANATORY NOTES

The *Funeral Directors and Establishments Act, 1989* replaces the *Funeral Services Act* and the *Prearranged Funeral Services Act*.

Some features of the Bill are as follows:

1. Funeral establishments, funeral directors and transfer services will be licensed by the Board of Funeral Services (the Board).
2. The Board will report to the Ministry of Consumer and Commercial Relations.
3. The Board will continue to consist of funeral directors and lay people appointed by the Lieutenant Governor in Council.
4. The Board is responsible for the education, licensing and discipline of funeral directors, funeral establishments and transfer services.
5. Decisions of the Board may be appealed to The Commercial Registration Appeal Tribunal (CRAT).
6. An individual who meets the requirements of the Act will be licensed as a funeral director in one of two categories, those who perform embalming and those who choose not to perform embalming.
7. Embalming, visitation or the arranging of a funeral is only available to the public through a licensed funeral establishment.
8. A funeral establishment must be managed and directly supervised by a licensed funeral director.
9. A transfer service may only provide for the removal, transportation or delivery of remains and the filing of necessary documentation. A transfer service need not be under the direction of a licensed funeral director.
10. The Bill also provides for inspections, freezing of assets, appointment of receivers and managers and restraining and cease and desist orders.
11. Telephone and door-to-door solicitation for the sale of funeral services or supplies is prohibited.
12. The Bill provides for regulations to deal with itemized price lists and consumer information.
13. The regulations also provide authority to prohibit funeral establishments from being located on or operated in connection with cemeteries or crematoria.
14. Funeral establishments and transfer services will be required under the regulations to contribute to a compensation fund to compensate consumers in the event of a defalcation.
15. A board of trustees will administer the compensation fund.
16. All moneys received for a prepaid funeral will be held together with income accrued in trust for the beneficiary until it is dispersed in accordance with the Act.
17. All prepaid contracts may be cancelled at any time prior to the services being delivered. If the contract is cancelled within thirty days of signing, no administration fee may be charged.



Bill 30

1989

## An Act respecting Funeral Directors and Establishments

HER MAJESTY, by and with the advice and consent of the Legislative Assembly of the Province of Ontario, enacts as follows:

### Definitions

**1.** In this Act,

“beneficiary” means a person for whom funeral services or supplies, or both, are to be provided under a contract or prepaid contract;

“Board” means the Board of Funeral Services;

“cemetery” means a cemetery within the meaning of the *Cemeteries Act, 1989*; 1989, c. ...

“Compensation Fund” means the Prepaid Funeral Services Compensation Fund established under the regulations;

“contract” means an agreement wherein a person provides or agrees to provide funeral services or supplies, or both, and includes prepaid contracts;

“depository” means a chartered bank, loan or trust company, Province of Ontario Savings Office or a credit union as defined in the *Credit Unions and Caisses Populaires Act*; R.S.O. 1980, c. 102

“Director” means a director appointed under the *Ministry of Consumer and Commercial Relations Act*; R.S.O. 1980, c. 274

“disbursements” means payments actually made by a funeral director or a person who operates a funeral establishment on behalf of a purchaser of funeral services or supplies, or both;

“embalming” means the preservation and disinfection of all or part of a dead human body by any means other than by refrigeration;

“equity share” means a share of a class of shares that carries a voting right either under all circumstances or under some circumstances that have occurred and are continuing;

“funeral” means a rite or ceremony in connection with the death of a person where the body is present;

“funeral director” means an individual who provides or directs the providing of funeral services;

“funeral establishment” means premises where funeral services are supplied;

“funeral services” means the care and preparation of dead human bodies and the co-ordination of rites and ceremonies with respect to dead human bodies, but does not include services provided by a cemetery owner under the *Cemeteries Act, 1989*;

1989, c. ...

“funeral supplies” means goods that are used in connection with the care and preparation of dead human bodies or the disposition of dead human bodies;

“income” means the interest or money earned, including the compounding thereof, by the investment of funds received under a prepaid contract;

“licence” means a licence issued under this Act and “licensed” has a corresponding meaning;

“Minister” means the Minister of Consumer and Commercial Relations;

“prearrangement” means an arrangement for the provision of specific funeral services, supplies or transportation of a dead human body on the death of a person who is alive at the time the arrangement is made;

“prepaid contract” means an agreement whereby a person contracts with a purchaser to provide or make provision for funeral services, funeral supplies, or both, or for the transportation of a dead human body, including disbursements, upon the death of a beneficiary, if any payment for the contract is made prior to the death of the beneficiary or the purchaser enters into an insurance contract or plan under which a licensee is to receive directly or indirectly the proceeds of the insurance policy upon the death of the beneficiary;



“prepayment” means the payment or the guarantee of a payment pursuant to a prepaid contract;

“prepayment funds” means the money deposited in trust under the provisions of this Act and the income therefrom and includes the proceeds of an insurance policy received by a licensee;

“prescribed” means prescribed by the regulations;

“Registrar” means the Registrar of the Board;

“regulations” means regulations made under this Act;

“transfer service” means a service to the public with respect to the disposition of dead human bodies, including the transportation of dead human bodies and the filling out of the necessary documentation with respect to the disposition of dead human bodies;

“Tribunal” means The Commercial Registration Appeal Tribunal.

**2.—**(1) There shall be a Registrar appointed by the Board for the purposes of this Act. Registrar

(2) The Registrar may exercise the powers and shall perform the duties conferred or imposed on the Registrar by or under this Act under the supervision of the Board. Powers of Registrar

(3) The Registrar shall maintain one or more registers in which is entered every person who is licensed under this Act, identifying the conditions and limitations attached to the licence, and shall note on the register every revocation, suspension and cancellation or termination of a licence and such other information as the Discipline Committee directs. Registers

(4) Any person has the right, during normal business hours, to inspect the registers maintained by the Registrar. Inspection

(5) The Registrar shall provide to any person, upon payment of a reasonable charge therefor, a copy of any part of the registers maintained by the Registrar. Copies

**3.—**(1) The Board of Funeral Services, a body corporate, is continued as a corporation without share capital. Board continued

(2) The principal object of the Board is to regulate the practices of funeral directors and persons who operate funeral establishments and transfer services in accordance with this Principal object

Act, the regulations and the by-laws in order that the public interest may be served and protected.

Additional  
objects

(3) For the purpose of carrying out its principal object, the Board has the following additional objects:

1. To establish, maintain and develop standards of knowledge and skill among funeral directors and persons who operate funeral establishments and transfer services.
2. To establish, maintain and develop standards of qualification and standards of practice for funeral directors and persons who operate funeral establishments and transfer services.
3. To establish, maintain and develop standards of professional ethics among funeral directors and persons who operate funeral establishments and transfer services.
4. To administer the Compensation Fund.
5. To oversee and inspect trust accounts that funeral establishments and transfer services are required by law to establish or maintain.
6. To mediate complaints between consumers and licensees.
7. To establish and develop standards for funeral establishments.
8. To perform such other duties and exercise such other powers as are imposed or conferred on the Board by or under any Act.

Capacity and  
powers of  
Board

(4) For the purpose of carrying out its objects, the Board has the capacity and the powers of a natural person.

Duties of  
Board

(5) The Board shall,

- (a) review the operation of this Act and the regulations and make recommendations to the Minister thereon;
- (b) approve or set courses of study and examinations for the qualification of applicants for licences; and
- (c) carry out such duties as are prescribed.



**4.—**(1) The Board shall be composed of the following members appointed by the Lieutenant Governor in Council: Composition

1. A prescribed number of funeral directors, one of whom,
  - i. is not licensed to operate a funeral establishment,
  - ii. is not a director of a corporation that is licensed to operate a funeral establishment, or
  - iii. does not direct the operation of a funeral establishment.
2. A prescribed number of persons who are not funeral directors.

(2) The members of the Board shall be appointed to hold office for a term not exceeding three years and may be reappointed for further successive terms, but shall not be appointed or reappointed for more than six successive years. Term of office

(3) A vacancy on the Board caused by the death, resignation, removal or incapacity to act of a member may be filled by the appointment by the Lieutenant Governor in Council of a person to hold office for the unexpired portion of the term of office of such member. Vacancy

(4) Five members of the Board, at least two of whom shall be members appointed under paragraph 2 of subsection (1), constitute a quorum. Quorum

(5) The Board shall appoint a chairperson and vice-chairperson and such other officers as are considered necessary from among the members of the Board. Officers

- (6) The members of the Board, Expenses and remuneration of members of Board
- (a) appointed under paragraph 1 of subsection (1) shall be paid by the Board such expenses and remuneration as are prescribed; and
  - (b) appointed under paragraph 2 of subsection (1) shall be paid, out of the moneys appropriated therefor by the Legislature, such expenses and remuneration as are determined by the Lieutenant Governor in Council.

Staff

(7) The Board may employ such employees and retain such assistance as is necessary to perform the work of the Board and may determine their salary, remuneration and terms and conditions of employment.

Meetings of  
Board

(8) The Board shall meet at least four times a year.

Continuation  
of Board  
members

(9) The members of the Board who were in office immediately before the coming into force of this Act are continued in office until the expiration of their terms or until their offices otherwise become vacant.

Annual  
report

(10) The Board shall deliver to the Minister each year an annual report on the affairs of the Board and on the operation of the Compensation Fund.

Idem

(11) The Minister shall submit the annual report to the Lieutenant Governor in Council and shall then lay the report before the Assembly if it is in session or, if not, at the next session.

Powers of  
Minister

**5.** The Minister may, in addition to any other powers and duties conferred on the Minister by or under any Act,

- (a) review the activities of the Board;
- (b) request the Board to undertake activities that, in the opinion of the Minister, are necessary and advisable to carry out the intent of this Act;
- (c) advise the Board with respect to the implementation of this Act and the regulations and with respect to the methods used or proposed to be used by the Board to implement policies and to enforce its by-laws and procedures.

By-laws

**6.—(1)** The Board may pass by-laws relating to the administrative and domestic affairs of the Board not inconsistent with this Act and the regulations and, without limiting the generality of the foregoing,

- 1. specifying the seal of the Board;
- 2. providing for the execution of documents by the Board;
- 3. respecting banking and finance;

4. fixing the financial year of the Board and providing for the audit of the accounts and transactions of the Board;
5. respecting the calling, holding and conducting of meetings of the Board and committees of the Board and the duties of members of the Board and committees of the Board;
6. providing for a code of ethics;
7. delegating to the Executive Committee such powers and duties of the Board as are set out in the by-laws, other than the power to make, amend or revoke regulations and by-laws;
8. respecting the calling, holding and conducting of meetings of licensees;
9. providing for the use of forms;
10. providing procedures for the making, amending and revoking of the by-laws;
11. respecting management of the property of the Board;
12. providing for the appointment, composition, powers and duties of committees in addition to those committees established under subsection 7 (1);
13. respecting the application of the funds of the Board and the investment and reinvestment of any of its funds not immediately required, and for the safe-keeping of its securities;
14. respecting membership of the Board in other organizations, the payment of annual assessments and provision for representatives at meetings;
15. respecting the appointment of inspectors by the Registrar for the purposes of this Act;
16. providing for meetings of the Board and committees, except in a proceeding in respect of a licence, by means of conference telephone or other communications equipment by means of which all persons participating in the meeting can hear each other, and a member of the Board or committee participating in a meeting in accordance with such by-law



shall be deemed to be present in person at the meeting;

17. providing that the Board or a committee may act upon a resolution consented to by the signatures of all members of the Board or the committee except in a proceeding in respect of a licence, and a resolution so consented to in accordance with such a by-law is as valid and effective as if passed at a meeting of the Board or the committee duly called, constituted and held for that purpose;
18. providing for the payment of necessary expenses of the Board and committees of the Board in the conduct of their business;
19. providing for the Board to enter into arrangements on behalf of licensees with respect to the bonding of licensees and requiring the payment and remittance of premiums in connection therewith, setting levies that shall be paid by licensees and exempting licensees or any class thereof from all or any part of such levy;
20. providing for the establishment of group insurance plans, other than for professional liability, in which licensees may participate on a voluntary basis;
21. regarding such other matters as are entailed in carrying on the business of the Board.

Distribution  
of by-laws

(2) A copy of the by-laws made under subsection (1) and amendments thereto,

- (a) shall be forwarded to the Minister;
- (b) shall be forwarded to each licensee; and
- (c) shall be available for public inspection in the office of the Board.

Minister may  
revoke or  
amend  
by-laws

(3) At any time before or after receiving a copy of a by-law made under subsection (1), the Minister may, by an order in writing, revoke or amend the by-law.

Idem

(4) Despite subsection (3), a by-law is effective until so revoked or amended by the Minister and no act done or right acquired under any such by-law before revocation or amendment by the Minister is prejudicially affected by the revocation or amendment.

**7.**—(1) The Board shall establish and appoint the following committees: Establishment of committees

1. Executive Committee.
2. Licensing Committee.
3. Complaints Committee.
4. Discipline Committee.
5. Compensation Fund Committee.

(2) The Board may establish such other committees in addition to those established under subsection (1) as the Board from time to time considers necessary. Idem

(3) If one or more vacancies occur in the membership of a committee, the members remaining constitute the committee so long as their number is not fewer than a quorum of the committee. Vacancies

**8.**—(1) The Executive Committee shall be composed of three persons who are members of the Board, one of whom shall be a person appointed under paragraph 2 of subsection 4 (1). Executive Committee

(2) Two members of the Executive Committee constitute a quorum. Quorum

(3) The Board may delegate to the Executive Committee the authority to exercise any power or perform any duty of the Board, other than to make, amend or revoke a by-law. Powers of Executive Committee

(4) Subject to ratification by the Board at its next ensuing meeting, the Executive Committee may take action upon any other matter that requires immediate attention between meetings of the Board, other than to make, amend or revoke a by-law. Urgent matters

**9.**—(1) The Licensing Committee shall be composed of three persons who are members of the Board, one of whom shall be a person appointed under paragraph 2 of subsection 4 (1). Licensing Committee

(2) The Board shall name one member of the Licensing Committee to be chairperson. Chairperson

(3) Two members of the Licensing Committee constitute a quorum. Quorum

Complaints  
Committee

**10.**—(1) The Complaints Committee shall be composed of three persons who are members of the Board, one of whom shall be a person appointed under paragraph 2 of subsection 4 (1).

## Idem

(2) No person who is a member of the Discipline Committee shall be a member of the Complaints Committee.

## Chairperson

(3) The Board shall name one member of the Complaints Committee to be chairperson.

## Quorum

(4) Two members of the Complaints Committee constitute a quorum.

Discipline  
Committee

**11.**—(1) The Discipline Committee shall be composed of four members of the Board, two of whom shall be persons appointed under paragraph 2 of subsection 4 (1).

## Chairperson

(2) The Board shall name one member of the Discipline Committee to be chairperson.

## Quorum

(3) Three members of the Discipline Committee constitute a quorum.

## Majority vote

(4) All disciplinary decisions of the Discipline Committee require the vote of a majority of the members of the Discipline Committee present at the hearing.

Disability of  
member

(5) If the Discipline Committee commences a hearing and a member of the Discipline Committee is unable to continue to act, the remaining members may complete the hearing despite the absence of the member.

Compensation Fund  
Committee

**12.**—(1) The Compensation Fund Committee shall be composed of three persons who are members of the Board, two of whom shall be persons appointed under paragraph 2 of subsection 4 (1).

## Chairperson

(2) The Board shall name one member of the Compensation Fund Committee to be chairperson.

## Quorum

(3) Two members of the Compensation Fund Committee constitute a quorum.

Powers and  
duties of  
Licensing  
Committee

**13.**—(1) The Licensing Committee shall consider all matters that are referred to it by the Registrar under section 22.

## Recommendations

(2) The Licensing Committee may make recommendations to the Registrar with respect to,



- (a) the eligibility of an applicant for a licence or a renewal of a licence;
- (b) issuing or refusing to issue a licence to an applicant for a licence or a renewal of a licence;
- (c) issuing a licence or a renewal of a licence to an applicant subject to conditions;
- (d) suspending or revoking the licence of a licensee;
- (e) the desirability of requiring an applicant for a licence or a renewal of a licence or a licensee to take and pass such additional training or part thereof that may be prescribed; or
- (f) exempting an applicant for a license or a renewal of a licence or a licensee from any licensing requirement.

**14.—(1)** The Complaints Committee shall consider and investigate complaints regarding the conduct or actions of any licensee, but no action shall be taken by the Complaints Committee under subsection (2) unless,

Duties of  
Complaints  
Committee

- (a) a written complaint has been filed with the Registrar and the licensee whose conduct or actions are being investigated has been notified of the complaint and given at least two weeks in which to submit in writing to the Committee any explanations or representations the licensee may wish to make concerning the matter; and
- (b) the Committee has examined or has made every reasonable effort to examine all records and other documents relating to the complaint.

(2) The Complaints Committee in accordance with the information it receives may,

Idem

- (a) consider all or part of the matter;
- (b) direct that all or part of the matter be referred to the Discipline Committee; and
- (c) subject to subsection (9), take or recommend such action that it considers appropriate in the circumstances and that is not inconsistent with this Act, the regulations or the by-laws.

Decisions  
and reasons

(3) The Complaints Committee shall advise the Registrar in writing of the action it proposes to take or recommend and its reasons therefor.

Notice

(4) Subsection (3) does not apply to a matter that is referred to the Discipline Committee.

Hearing

(5) The Complaints Committee is not required to hold a hearing or to afford any person an opportunity for a hearing or to make oral submissions before it prior to it taking action or making a recommendation under this section.

Notice

(6) The Registrar shall send to the complainant and to the person complained against by prepaid first class mail a copy of the proposal of the Complaints Committee and its reasons therefor, if any, together with notice that informs the person to whom it is sent that the person is entitled to a hearing by the Tribunal if the person mails or delivers to the Registrar and to the Tribunal, within fifteen days after the notice is served on the person, notice in writing requiring a hearing and the person may so require such a hearing.

No hearing

(7) If a complainant or the person complained against does not require a hearing by the Tribunal, the Complaints Committee may carry out the proposal stated in the notice to the complainant or the person complained against.

Hearing

(8) If the complainant or the person complained against requires a hearing, the Tribunal shall appoint a time for and hold a hearing.

Order

(9) After holding a hearing, the Tribunal may by order direct the Complaints Committee to carry out the proposal or refrain from carrying out the proposal and to take such action as the Tribunal considers the Complaints Committee ought to take in accordance with this Act and the regulations and, for such purposes, the Tribunal may substitute its opinion for that of the Complaints Committee.

Conditions

(10) The Tribunal may attach such conditions to its order as it considers proper to give effect to the purposes of this Act.

Parties

(11) The Registrar, the person who required the hearing and such other persons as the Tribunal may specify are parties to proceedings before the Tribunal under this section.

Reference by  
Board or  
Executive  
Committee

**15.** Despite subsection 14 (1), the Board or the Executive Committee may direct the Discipline Committee to hold a hearing and determine any allegation of professional misconduct or incompetence on the part of a funeral director.

**16.—(1)** The Discipline Committee shall,Duties of  
Discipline  
Committee

- (a) when so directed by the Board, Executive Committee or Complaints Committee, hear and determine allegations of professional misconduct or incompetence against a funeral director;
- (b) hear and determine matters referred to it by the Board, Registrar, Executive Committee or Complaints Committee under this Act with respect to funeral directors; and
- (c) perform such other duties as are assigned to it by the Board.

**(2)** A funeral director may be found guilty of professional misconduct by the Discipline Committee if,Professional  
misconduct

- (a) the funeral director has been found guilty of an offence that is relevant to the funeral director's suitability to practise as a funeral director, upon proof of such conviction; or
- (b) the funeral director has been guilty in the opinion of the Discipline Committee of professional misconduct as prescribed.

**(3)** The Discipline Committee may find a funeral director to be incompetent if in its opinion,

Incompetence

- (a) the funeral director has displayed in the providing or in directing the providing of funeral services or funeral supplies or in performing or supervising the performing of an embalming, a lack of knowledge, skill or judgment of a nature or to an extent that demonstrates the funeral director is unfit to continue as a funeral director;
- (b) the funeral director is suffering from a physical or mental condition or disorder of a nature and extent that makes it desirable in the interest of the public that the funeral director no longer be permitted to continue as a funeral director.

**(4)** If the Discipline Committee finds a funeral director guilty of professional misconduct or incompetence, it may by order do any of the following things or any combination of the following things:Powers of  
Discipline  
Committee

1. Revoke the licence of the funeral director.



2. Suspend the licence of the funeral director for a stated period.
3. Impose restrictions on the licence of the funeral director for a period and subject to the conditions specified by the Discipline Committee.
4. Reprimand the funeral director and direct that the fact of the reprimand be recorded on the applicable register.
5. Impose such fine as the Discipline Committee considers appropriate to a maximum of \$10,000 to be paid by the funeral director to the Treasurer of Ontario for payment into the Consolidated Revenue Fund.
6. Direct that the imposition of a penalty be suspended or postponed for the period and upon the terms specified by the Discipline Committee.

## Costs

(5) If the Discipline Committee is of the opinion that the commencement of the proceedings was unwarranted, the Committee may order that the Board reimburse the funeral director for the funeral director's costs or such portion thereof as the Discipline Committee fixes.

Stay on  
appeal for  
incompetence

(6) If the Discipline Committee revokes, suspends or restricts a licence on the grounds of incompetence, the decision takes effect immediately despite the fact that an appeal is taken from the decision, unless the court to which the appeal is taken otherwise orders and, where the court is satisfied that it is appropriate in the circumstances, the court may so order.

Stay on  
appeal for  
professional  
misconduct

(7) If the Discipline Committee revokes, suspends or restricts a licence on grounds other than for incompetence, the order does not take effect until the time for appeal from the order has expired without an appeal being taken or, if taken, the appeal has been disposed of or abandoned, unless the Discipline Committee otherwise orders, and, where the Committee considers that it is appropriate for the protection of the public, the Committee may so order.

Service of  
decision of  
Discipline  
Committee

(8) If the Discipline Committee finds a funeral director guilty of professional misconduct or incompetence, a copy of the decision shall be served upon the person complaining in respect of the conduct or action of the funeral director.

Continuation  
on expiry of  
Committee  
membership

(9) If a proceeding is commenced before the Discipline Committee and the term of office on the Board or on the

Committee of a member sitting for the hearing expires or is terminated before the proceeding is disposed of but after evidence has been heard, the member shall be deemed to remain a member of the Discipline Committee for the purpose of completing the disposition of the proceeding in the same manner as if his or her term of office had not expired or been terminated.

**17.—(1)** In proceedings before the Discipline Committee, the Board and the funeral director whose conduct is being investigated in the proceedings are parties to the proceedings.

Parties to discipline proceedings

(2) A funeral director whose conduct is being investigated in proceedings before the Discipline Committee shall be afforded an opportunity to examine before the hearing any written or documentary evidence that will be produced or any report the contents of which will be given in evidence at the hearing.

Examination of documentary evidence

(3) Members of the Discipline Committee holding a hearing shall not have taken part before the hearing in any investigation of the subject-matter of the hearing other than as a member of the Board considering the referral of the matter to the Discipline Committee or at a previous hearing of the Committee.

Members holding hearing not to have taken part in investigation, etc.

(4) Members of the Discipline Committee shall not communicate directly or indirectly in relation to the subject-matter of the hearing with any person or with any party or representative of a party except upon notice to and opportunity for all parties to participate.

No communication

(5) The Discipline Committee may seek legal advice from an adviser independent from the parties and, in such case, the nature of the advice shall be made known to the parties in order that they may make submissions as to the law.

Advice

(6) The oral evidence taken before the Discipline Committee shall be recorded and, if so required, copies or a transcript thereof shall be furnished only to the parties at the cost to the parties.

Recording of evidence

(7) Documents and things put in evidence at a hearing of the Discipline Committee shall, upon the request of the person who produced them, be released to the person by the Committee within a reasonable time after the matter in issue has been finally determined.

Release of documentary evidence

Appeal to  
Tribunal

**18.—**(1) A party to proceedings before the Discipline Committee may appeal from its decision or order to the Tribunal.

Application

(2) Subsections 14 (6) to (11) apply with necessary modifications to an appeal to the Tribunal from a decision or order of the Discipline Committee.

Licence  
required

**19.—**(1) No person shall act or imply that the person is available to act as a funeral director unless the person is licensed to do so.

Idem

(2) No person shall operate or imply that the person is available to operate a funeral establishment unless the person is licensed to do so.

Idem

(3) No person shall operate or imply that the person is available to operate a transfer service unless,

(a) the person is licensed to do so; or

(b) the person is licensed to operate a funeral establishment and the transfer service is operated as part of the normal operation of the funeral establishment.

Idem

(4) No person other than a funeral director who is licensed to do so shall perform or imply that the person is available to perform embalming.

Place of  
business

(5) No person shall operate a funeral establishment except at a place that is named in the licence of the person.

Funeral  
services

(6) No funeral director shall offer funeral services except through an operator of a funeral establishment.

Idem

(7) No funeral director shall offer funeral services to the public except through an operator of a funeral establishment who is licensed to do so.

Funeral  
establishment

(8) No operator of a funeral establishment shall employ a person as a funeral director unless the person is licensed as a funeral director.

Direction and  
management

(9) Every operator of a funeral establishment shall ensure that the funeral establishment is managed and directly supervised by a funeral director who is responsible for the conduct or misconduct of any person to whom the funeral director delegates responsibilities.



(10) No funeral director shall manage and directly supervise the operation of more than one funeral establishment except as prescribed. Idem

(11) Each corporation that is licensed to operate a funeral establishment shall ensure that at least one of the directors of the corporation is a funeral director. Corporation

(12) Subsections (1) and (4) do not apply, Exceptions

(a) to a student in a training program who is working under the supervision and in the presence of a funeral director; or

(b) to a student who is enrolled in a recognized course of funeral services education and who is working under the supervision and in the presence of the instructor of the course.

(13) Subsection (4) does not apply to a person employed in a recognized school of medicine or anatomy while so employed. Idem

**20.**—(1) A person may apply to the Registrar for a licence to operate a funeral establishment or to operate a transfer service. Application

(2) A person who has successfully completed the educational requirements that are prescribed may apply to the Registrar for a licence as a funeral director. Idem

(3) An applicant is entitled to a licence or a renewal of a licence as a funeral director or to operate a funeral establishment or to operate a transfer service except if, Requirement

(a) the applicant cannot reasonably be expected to be financially responsible in the conduct of the applicant's business;

(b) the past and present conduct of the applicant, the officers or directors of the applicant or persons holding more than 10 per cent of the equity shares of the applicant affords reasonable grounds for belief that the applicant will not operate in accordance with the law and with integrity and honesty;

(c) the applicant or an employee or agent of the applicant makes a false statement or provides a false statement in an application for a licence;

- (d) the applicant is carrying on activities that are, or will be if the applicant is licensed, in contravention of this Act or the regulations;
- (e) the applicant will, if licensed, be carrying on activities under this Act and the regulations that are in contravention of another Act or a municipal by-law; or
- (f) in the case of a corporation that operates a funeral establishment, no director of the corporation is a funeral director.

## Issue

(4) The Registrar shall issue a licence as a funeral director, to operate a funeral establishment or to operate a transfer service, as the case requires, to every applicant therefor who pays the fee that is prescribed, complies with the regulations and is not disentitled under subsection (3).

## Conditions

(5) A licence is subject to such conditions as may be consented to by the applicant, imposed by the Tribunal or prescribed.

## Refusal to issue

**21.**—(1) Subject to section 22, the Registrar may refuse to issue a licence to an applicant if the applicant is not entitled to a licence under subsection 20 (3).

## Refusal to renew

(2) Subject to section 22, the Registrar may refuse to renew or may suspend or revoke a licence,

- (a) for any reason that would disentitle the licensee to a licence under subsection 20 (3) if the licensee were an applicant;
- (b) if the licensee is in breach of a condition of the licence; or
- (c) if the licensee is a corporation and the shareholders of the corporation have changed in the manner and to the extent prescribed.

## Proposal

**22.**—(1) If the Registrar proposes to refuse to issue or renew a licence, proposes to issue a licence subject to conditions or proposes to suspend or revoke a licence, the Registrar shall serve notice of the proposal, together with written reasons therefor, on the applicant or the licensee.

## Notice

(2) A notice under subsection (1) shall inform the applicant or licensee that the applicant or licensee is entitled to a hearing by the Tribunal if the applicant or licensee mails or deliv-

ers to the Registrar and to the Tribunal, within fifteen days after the notice is served on the applicant or licensee, notice in writing requiring a hearing and the applicant or licensee may so require such a hearing.

(3) If an applicant or registrant does not require a hearing by the Tribunal, the Registrar may carry out the proposal stated in the notice to the applicant or licensee. No hearing

(4) If an applicant or registrant requires a hearing, the Tribunal shall appoint a time for and hold a hearing. Hearing

(5) After holding a hearing, the Tribunal may by order direct the Registrar to carry out the proposal or refrain from carrying out the proposal and to take such action as the Tribunal considers the Registrar ought to take in accordance with this Act and the regulations and for such purposes the Tribunal may substitute its opinion for that of the Registrar. Order

(6) The Tribunal may attach such conditions to its order or to the licence as it considers proper to give effect to the purposes of this Act. Conditions

(7) The Registrar, the applicant or licensee who has required the hearing and such other persons as the Tribunal may specify are parties to proceedings before the Tribunal under this section. Parties

(8) The Registrar may cancel a licence upon the request in writing of the licensee and the surrender of the licence by the licensee. Cancellation

(9) The Registrar may refer any matter that deals with licensing to the Licensing Committee for their recommendations. Referral

**23.—**(1) A person who is refused a licence or who is refused a renewal of a licence may apply in writing to the Registrar for the issuance of a licence only if at least one year has passed since the refusal. Application

(2) A person whose licence is revoked under this Act or whose registration was cancelled under a predecessor of this Act may apply in writing to the Registrar for the issuance of a licence only if at least one year has passed since the revocation or cancellation. Idem

(3) A person whose licence is suspended under this Act or whose registration was suspended under a predecessor of this Act, for more than one year, may apply in writing to the Reg-



istrar for the removal of the suspension only if at least one year has passed since the suspension.

Temporary  
order

**24.**—(1) If the Registrar proposes to suspend or revoke a licence, the Registrar may, if the Registrar considers it to be necessary in the public interest, by order, temporarily suspend the licence and the order shall take effect immediately.

Hearing

(2) If a hearing is required with respect to a proposal to suspend or revoke a licence, the order expires fifteen days after the date of the notice requiring the hearing unless the hearing is commenced, in which case the Tribunal holding the hearing may extend the time of expiration until the hearing is concluded.

No licence

(3) If the Registrar by order temporarily suspends a licence under this section or subsection 22 (2), the licensee shall during the term of the suspension be considered not to be licensed under this Act.

Stay

R.S.O. 1980,  
c. 274

**25.** Despite the fact that a licensee appeals from an order of the Tribunal under section 11 of the *Ministry of Consumer and Commercial Relations Act*, the order takes effect immediately but the Tribunal may grant a stay until the disposition of the appeal.

Continuation

**26.** If in the time prescribed therefor or, if no time is prescribed before the expiry of the licensee's licence, a licensee applies in the manner prescribed for renewal of the licence and pays the fee prescribed, the licence shall be deemed to continue,

(a) until the renewal is granted; or

(b) if the licensee is served with a notice that the Registrar proposes to refuse to grant the renewal, until the time for giving notice requiring a hearing has expired and, if a hearing is required, until the Tribunal has made its order.

Advertising

**27.**—(1) If the Director or the Registrar believes, on reasonable and probable grounds, that a person licensed under this Act has made a false or misleading public representation or that a representation is in contravention of this Act or the regulations, the Director or the Registrar shall order the person to stop making the representation and in the order shall set out the reasons for the order.

(2) A person who receives an order under subsection (1) shall immediately comply with the order and shall refrain from making the representation, in any form, in the future. Compliance with order

(3) Any person who receives an order under subsection (1) may appeal the order to the Tribunal. Appeal

(4) The Tribunal may issue a stay of any order made by the Registrar under subsection (1). Stay of order

**28.** If a person is entitled to the repayment of money paid for or on account of funeral services, the operator of the funeral establishment, the funeral director who managed or manages the operation of the funeral establishment and any funeral director in the employ of the operator of the funeral establishment who received the money or any part thereof are liable jointly and severally with any other person who is liable for the repayment of the money. Repayment

**29.** A licence is not required with respect to rites and ceremonies traditionally provided at a place of worship. Place of worship

**30.—**(1) No person other than a person who is licensed to operate a funeral establishment or a transfer service and who is a participant in good standing in the Compensation Fund shall enter into or offer to enter into a prepaid contract with a purchaser. Prepaid contracts

(2) Subsection (1) does not apply to a person selling funeral supplies under the authority of the *Cemeteries Act, 1989*. Idem  
1989, c. ...

**31.—**(1) No licensee shall enter into a prepaid contract that contains a provision for the payment of interment rights in a cemetery lot. Contracts

(2) All goods or services for which a licensee accepts payment in respect of one beneficiary shall be included in one prepaid contract. One contract

(3) No licensee shall enter into a prepaid contract that guarantees the price of any goods or services in the contract unless the price of all goods and services included in the contract are guaranteed. Guarantee

**32.—**(1) Prior to the death of the beneficiary, the purchaser of a contract may cancel the contract at any time except if the contract provides otherwise. Cancellation

Idem (2) Prior to the death of the beneficiary but after the death of the purchaser, the beneficiary or the beneficiary's personal representative may cancel the contract at any time.

Idem (3) After the death of the beneficiary, only the beneficiary's personal representative may at any time cancel the contract prior to the delivery of all the services contracted for.

Idem (4) Subsections (1), (2) and (3) apply to contracts entered into before this Act comes into force.

Prearrangement fees **33.** No person shall charge or accept any payment with respect to a prearrangement.

Trust **34.—**(1) Every person who receives a payment under a prepaid contract shall hold the amount of the payment together with all income accrued thereon in trust until it is disbursed in accordance with this Act and the regulations.

Cancellation (2) If a prepaid contract is cancelled, the person holding the funds in trust under the contract shall forthwith pay the funds and all income accrued thereon to,

(a) if the prepaid contract is cancelled prior to the death of the beneficiary, the purchaser or the person set out in the contract;

(b) if the prepaid contract is cancelled prior to the death of the beneficiary but after the death of the purchaser, the beneficiary; or

(c) if the prepaid contract is cancelled after the death of the beneficiary, the estate of the beneficiary.

Deductions (3) If a prepaid contract is cancelled after thirty days of the entering into of the contract, the person paying under subsection (2) may deduct from the amount paid such fees as are prescribed.

Application (4) Subsection (1) does not apply to a payment made to an insurer under an insurance contract or plan.

Repayment **35.—**(1) If a prepaid contract is fulfilled, the balance, if any, of the prepayment funds that are in excess of the cost of delivering the services and supplies contracted for shall be paid to the beneficiary's estate forthwith despite any contrary provision in the contract.

Costs (2) The cost of delivering the services and supplies required under a prepaid contract shall not exceed the amount that



would otherwise be charged for the same services and supplies if there had not been prepayment.

**36.**—(1) A prepaid contract is not enforceable by an operator of a funeral establishment or transfer service unless, Contract requirements

- (a) it is written, signed by both parties and complies with the regulations;
- (b) it sets out the purchaser's cancellation rights under this Act; and
- (c) the owner delivers a signed copy of the contract to the purchaser at the time the contract is made.

(2) An operator of a funeral establishment or transfer service who receives money under a contract that is not enforceable because of the application of this section shall refund to the purchaser, immediately upon written demand, with interest at the prescribed rate, all money received. Refund with interest

(3) Subsection (2) does not apply after the supplies and services have been provided under the contract. Exception

**37.** Every licensee shall make such information as is prescribed available to the public in the manner and form prescribed. Public information

**38.**—(1) No person shall contact, in any way, a person in a hospital, nursing home or such other institution as is prescribed for the purpose of suggesting that a contract be made. Soliciting prohibited

(2) No person shall contact, by telephone or in person, a person for the purpose of suggesting that a contract be made. Idem

(3) This section does not prohibit, Exception

- (a) a contact made at the request of the person being contacted; or
- (b) a contact with a licensee.

**39.**—(1) No person shall operate a funeral establishment or transfer service in conjunction with the owner of a cemetery or crematorium in a manner that is prescribed. Prohibition

(2) No person shall operate a funeral establishment or transfer service from locations that are prescribed. Idem

Restraining  
order

**40.**—(1) If the Director or the Board is of the opinion that a person is not complying with this Act or the regulations, despite the imposition of a penalty in respect of the non-compliance and despite the fact that another remedy may be available, the Director or the Board may apply to a judge of the High Court for an order directing the person to comply.

Idem

(2) Upon an application under subsection (1), the judge may make the order applied for or such other order as the judge thinks appropriate.

Idem

(3) An appeal lies to the Divisional Court from an order made under subsection (2).

Freezing  
assets

**41.**—(1) If the Director has reasonable and probable grounds to believe that a licensee is doing or is about to do something that will jeopardize the public interest, the Director may direct any person holding, having on deposit or controlling assets of the licensee or trust funds under the control of the licensee to hold the assets or trust funds until further instructions are received from the Director to release a particular asset or trust fund from the direction.

Scope of  
direction

(2) In the case of a bank or a corporation, a direction under subsection (1) applies only to the offices, branches or agencies thereof named in the direction.

Application  
for directions

(3) Any person named in a direction issued under subsection (1), if in doubt as to the application of the direction to particular assets or trust funds, may apply to the Director for an order of clarification.

Revocation  
or  
amendment  
of direction

(4) On an application of a licensee or any other person having an interest therein, the Director may make an order on such conditions as are set out in the order revoking the direction or consenting to the release of a particular asset or trust fund from the direction.

Appeal

(5) A person affected by a direction or order of the Director made under this section or a refusal to make an order may appeal to the Tribunal.

Application

(6) Subsections 14 (6) to (11) apply with necessary modifications to an appeal to the Tribunal from a direction or order of the Director.

Inspectors

**42.**—(1) The Registrar or a Director may appoint inspectors for the purpose of determining whether there is compliance with this Act and the regulations.

(2) An inspector exercising a power under this Act shall, on request, produce his or her certificate of appointment. Certificate of appointment

**43.**—(1) For the purpose of ensuring compliance with this Act and the regulations, an inspector may, Inspections

- (a) enter any place at any reasonable time;
- (b) request the production for inspection of documents or things that may be relevant to the inspection;
- (c) inspect and, upon giving a receipt therefor, remove, for the purpose of making copies or extracts, documents or things relevant to the inspection;
- (d) inquire into negotiations, transactions, loans or borrowings of a licensee and into assets owned, held in trust, acquired or disposed of by a licensee that are relevant to an inspection;
- (e) conduct such tests as are reasonably necessary to determine this Act and the regulations; and
- (f) remove materials or substances for examination or test purposes subject to the licensee or other occupant of the premises being notified thereof.

(2) Subsection (1) does not apply to confer a power of entry to a room actually used as a dwelling without the consent of the occupier. Entry to dwellings

(3) A justice of the peace may issue a warrant authorizing the person named in the warrant, Warrant

- (a) to do anything set out in clause (1) (a), (c), (e) or (f);
- (b) to search for and seize any document or thing relevant to the inspection; or
- (c) to enter and search a room actually used as a dwelling.

(4) A warrant may be issued under subsection (3) if the justice of the peace is satisfied on information under oath that, in the case of a warrant to be issued under, Requirements for warrant to issue

- (a) clause (3) (a), an inspector has been prevented from doing anything permitted under clause (1) (a), (c), (e) or (f) or there is reasonable ground to believe



that an inspector may be prevented from doing any of those things;

- (b) clause (3) (b), to search for and seize a document or thing that there is reasonable ground to believe will afford evidence relevant to a contravention of this Act or the regulations; or
- (c) clause (3) (c), it is necessary that a room actually used as a dwelling be entered for the purposes of carrying out an inspection or there is, in such a room, a document or thing that there is reasonable ground to believe is relevant to an inspection under this Act.

Execution of warrant (5) A warrant issued under this section shall specify the hours and days during which it may be executed.

Expiry (6) Unless renewed, a warrant under this section expires not later than thirty days after the date on which it is made.

Notice not required (7) A warrant under this section may be issued or renewed before or after expiry upon application without notice.

Experts (8) An inspector is entitled to call upon such experts as are necessary to assist the inspector in carrying out an inspection under this Act.

Assistance (9) A person doing anything under the authority of a warrant issued under this section is authorized to call on such police officers to assist and to use such force as is necessary in the execution of the warrant.

Copies (10) An inspector taking material in order to copy it shall make the copy with reasonable dispatch and shall promptly return the material taken.

Admissibility of copies (11) Copies of, or extracts from, documents and things removed under this section and certified as being true copies of, or extracts from, the originals by the person who made them are admissible in evidence to the same extent as, and have the same evidentiary value as, the documents or things of which they are copies or extracts.

Obstruction of inspector **44.**—(1) No person shall obstruct an inspector in carrying out an inspection under this Act or withhold, destroy, conceal or refuse to provide any relevant information or thing required for the purpose of the inspection.

(2) It is a condition of each licence issued under this Act that the licensee facilitate an inspection relevant to the licence.

Facilitating  
inspection

**45.**—(1) The Director or Registrar may apply to a judge or a local judge of the Supreme Court for the appointment of a receiver and manager of an involved funeral establishment or transfer service if,

Appointment  
of receiver  
and manager

- (a) the Director or Registrar has reasonable and probable grounds to believe that a person registered under this Act has failed or is about to fail to provide contracted and paid for funeral services to a client;
- (b) the Director or Registrar is advised that a proposal to suspend or revoke a licence under section 21 or to temporarily suspend a licence under section 24 has been made; or
- (c) the Director has directed or is about to make a direction under section 41.

(2) A judge, upon an application being made under subsection (1), without notice or, if the judge considers that notice should be given, upon such notice as the judge stipulates, may, if it is considered in the public interest and subject to the *Bankruptcy Act* (Canada), appoint a receiver and manager to take possession and control of the business of the person in respect of whom an action referred to in subsection (1) applies for a period not exceeding sixty days.

Idem

R.S.C. 1985,  
c. B-3

(3) An appointment made under subsection (2) may be extended, upon an application without notice, for an additional period not exceeding sixty days.

Extension

(4) A receiver and manager appointed under subsection (2) shall take possession and control of the assets of the business and shall thereafter conduct the business and take such steps as in the opinion of the receiver and manager should be taken toward its rehabilitation.

Receiver and  
manager  
taking  
control

(5) For the purposes of subsection (4), the receiver and manager have all the powers of the board of directors of the corporation, if the business is a corporation, or of a sole proprietor or all partners if the business is not a corporation and, without limiting the generality of the foregoing, the receiver and manager may,

Idem

- (a) exclude the directors, officers, servants and agents of the business from the premises and property of the business; and
- (b) carry on, manage and conduct the operations of the business and in the name of the business preserve, maintain, realize, dispose of and add to the property of the business and receive the incomes and revenues of the business.

Enforcement  
of order

(6) An order made under this section may be enforced in the same manner as any order or judgment of the Supreme Court and may be varied or discharged upon an application made by notice.

Rules of  
practice

(7) Upon an application being made under this section, the rules of practice of the Supreme Court apply.

Regulations

**46.—**(1) The Lieutenant Governor in Council may make regulations,

- 1. prescribing the manner in which trust accounts shall be kept and accounted for;
- 2. providing for the inspection of trust accounts;
- 3. prescribing the duties of depositories with respect to trust funds held under this Act;
- 4. requiring receipts to be given by licensees with respect to contracts;
- 5. providing for the establishment, maintenance and administration of the Compensation Fund;
- 6. prescribing provisions that relate to the investing and paying out of moneys from the Compensation Fund;
- 7. providing for the payment of levies into the Compensation Fund and prescribing the amounts of levies;
- 8. providing for appeals from a refusal to pay out of the Compensation Fund;
- 9. governing the powers and duties of the trustee administering the Compensation Fund;

10. requiring the purchase of bonds for the purpose of indemnifying the Compensation Fund;
11. prescribing the terms and amounts of bonds;
12. providing for payment out of the Compensation Fund of claims and procedures to be followed with respect thereto;
13. requiring participation in the Compensation Fund by licensees;
14. on any matter relating generally to the purchase, renewal or terms of a bond or the disposition of payments received thereunder;
15. governing the form and content of contracts and receipts, including the cancellation of contracts;
16. prescribing the terms that a contract shall be deemed to contain;
17. prescribing conditions under which contracts may be assigned and prohibiting assignments that are not in accordance with the prescribed conditions;
18. regulating, limiting or prohibiting the soliciting of contracts;
19. governing the term during which each class or type of licence is valid;
20. exempting any person or thing or class of person or thing from the application of any provision of this Act or the regulations and prescribing conditions for any exemption;
21. authorizing persons, other than funeral directors, to perform specified acts in the providing of funeral services under the supervision or direction of a funeral director;
22. governing the books, accounts, records and information that shall be kept by licensees and that shall be filed with the Registrar;
23. prescribing fees and requiring the payment of fees;
24. prescribing forms and providing for their use;



25. prescribing educational requirements and testing requirements on an initial and ongoing basis for licensees and employees of licensees;
26. governing applications for licences and renewals of licences;
27. prescribing classes of licences;
28. governing the requirements and qualifications for the issuing of licences and prescribing the conditions for obtaining and maintaining a licence;
29. governing standards of practice and operation for licensees;
30. respecting the methods and materials that may be used in providing funeral services;
31. prohibiting or governing the advertising of funeral services or funeral supplies and prohibiting or governing the display of funeral supplies to the public;
32. governing the construction, location, equipment, maintenance, repairs, additions and alterations to funeral establishments and governing the information, plans and materials to be furnished to the Registrar with respect thereto;
33. governing the equipment and practices with respect to the embalming, transportation, preparation and disposal of dead human bodies;
34. regulating, controlling and prohibiting the use of terms, titles or designations by licensees;
35. prescribing practices or actions that are evidence of incompetence or lack of honesty and integrity;
36. governing the availability and display of funeral services and funeral supplies;
37. prescribing specifications and minimum requirements for funeral services and funeral supplies;
38. prescribing, for any notice required to be given under this Act, the type of notice and the manner in which it is to be given;

39. governing the payment of money into and out of trust funds, including the time within which and the circumstances under which payments are to be made;
40. providing for the maintenance and inspection of registers of persons who are licensed;
41. prescribing anything that is referred to in this Act as being prescribed.

(2) A regulation made under this Act may be of limited application. Limited application

(3) A regulation made under this section may be retroactive in effect and may apply to contracts entered into before this Act comes into force. Retroactive

**47.—**(1) Every person who, Offence

- (a) furnishes false, misleading or incomplete information in an application under this Act or in a statement or return required to be furnished under this Act or the regulations;
- (b) fails to comply with a direction or order made under this Act; or
- (c) contravenes any provision of this Act or the regulations,

is guilty of an offence.

(2) Every director or officer of a corporation who concurs in an offence under this Act is guilty of an offence. Idem

(3) An individual who is convicted of an offence under this Act is liable to a fine of not more than \$20,000 and on a subsequent conviction to a fine of not more than \$20,000 and to imprisonment for a term of not more than one year. Idem

(4) A corporation that is convicted of an offence under this Act is liable to a fine of not more than \$40,000. Idem

(5) No proceeding under this section shall be commenced more than two years after the facts upon which the proceedings are based first came to the knowledge of the Director. Limitation

(6) A statement as to the time when the facts upon which proceedings are based first came to the knowledge of the Certificate as evidence

Director purporting to be certified by the Director is, without proof of the office or signature of the Director, admissible in evidence in any proceeding, in the absence of evidence to the contrary, as evidence of the facts stated therein.

Restitution

(7) If a person is convicted of an offence under this Act, the court making the conviction may, in addition to any other penalty, order the person convicted to make compensation or restitution in relation thereto.

Matters  
confidential

**48.**—(1) Every person employed in the administration of this Act, including any person making an inspection under this Act and any member of the Board or a committee of the Board, shall preserve secrecy with respect to all matters that come to the person's knowledge in the course of the person's duties, employment, inquiry or inspection and shall not communicate any such information to any other person except,

- (a) as may be required in connection with the administration of this Act and the regulations or any proceedings under this Act or the regulations;
- (b) to the person's counsel;
- (c) with the consent of the person to whom the information relates; or
- (d) to an employee of the Ministry of Consumer and Commercial Relations or to an employee of another ministry who requires the information in the performance of his or her duties and if disclosure is necessary for the administration of this Act or any other Act and the regulations thereunder administered by the Minister.

Idem

(2) The Ministry of Consumer and Commercial Relations or another ministry may disclose information in its custody or control to an employee of the Board if,

- (a) the personal information is reasonably required to verify the truth of the contents of an application for, or an application for renewal of, a licence or to verify the truth of any other information supplied in support of any such application; or
- (b) the Ministry or agency of the Ministry has reasonable grounds to believe that the personal information is relevant to a person's qualification to hold a licence.

(3) No person to whom subsection (1) applies shall be required to give testimony in any civil suit or proceeding with regard to information obtained by the person in the course of the person's duties, employment, inquiry, investigation or inspection except in a proceeding under this Act or the regulations.

Testimony in  
civil suit

**49.** A statement as to,

Certificate as  
evidence

- (a) the licensing or non-licensing of any person;
- (b) the filing or non-filing of any document or material required or permitted to be filed with the Registrar;  
or
- (c) any other matter pertaining to licensing, non-licensing, filing or non-filing,

containing information from the records kept by the Registrar under this Act purporting to be certified by the Registrar under the seal of the Board is, without proof of the office or signature of the Registrar, admissible in evidence in any proceeding, in the absence of evidence to the contrary, as evidence of the facts stated therein.

**50.—**(1) A notice, order or other document under this Act or the regulations is sufficiently given, served or delivered if delivered personally or sent by first class mail addressed to the person to whom it is to be given, served or delivered at that person's last known address.

Service

(2) A notice, order or other document sent by first class mail in accordance with subsection (1) shall be deemed to be given, served or delivered on the fifth day after the day of mailing, unless the person to whom it is sent establishes that the notice, order or other document was not received until a later date because of absence, accident, illness or other cause beyond that person's control.

Idem

**51.—**(1) A funeral director who is registered with the Board of Funeral Services under the *Funeral Services Act* on the date this Act comes into force is deemed to be licensed as a funeral director until the expiration of the licence, unless the licence is sooner surrendered, suspended or revoked.

Transition  
R.S.O. 1980,  
c. 180

(2) A person who is licensed with the Board of Funeral Services under the *Funeral Services Act* to establish and maintain a funeral services establishment on the date this Act comes into force is deemed to be licensed to operate a funeral

Idem



establishment until the expiration of the licence, unless the licence is sooner surrendered, suspended or revoked.

Funeral  
Services  
Review  
Board not  
continued

**52.** The board known as the Funeral Services Review Board is dissolved and any matter before the Board on the date this Act comes into force shall be dealt with by the Tribunal.

Repeals

**53.** The following are repealed:

1. The *Funeral Services Act*, being chapter 180 of the Revised Statutes of Ontario, 1980.
2. Section 3 of the *Mobility Rights Statute Law Amendment Act, 1985*, being chapter 5.
3. The *Prearranged Funeral Services Act*, being chapter 387 of the Revised Statutes of Ontario, 1980.

Commence-  
ment

**54.** This Act comes into force on a day to be named by proclamation of the Lieutenant Governor.

Short title

**55.** The short title of this Act is the *Funeral Directors and Establishments Act, 1989*.

# Bill 30

## **An Act respecting Funeral Directors and Establishments**

The Hon. G. Sorbara

*Minister of Consumer and Commercial Relations*



*1st Reading*      June 12th, 1989

*2nd Reading*      June 21st, 1989

*3rd Reading*

*Royal Assent*

*(Reprinted as amended by the Resources Development Committee)*

## EXPLANATORY NOTES

The *Funeral Directors and Establishments Act, 1989* replaces the *Funeral Services Act* and the *Prearranged Funeral Services Act*.

Some features of the Bill are as follows:

1. Funeral establishments, funeral directors and transfer services will be licensed by the Board of Funeral Services (the Board).
2. The Board will report to the Ministry of Consumer and Commercial Relations.
3. The Board will continue to consist of funeral directors and lay people appointed by the Lieutenant Governor in Council.
4. The Board is responsible for the education, licensing and discipline of funeral directors, funeral establishments and transfer services.
5. Decisions of the Board may be appealed to The Commercial Registration Appeal Tribunal (CRAT).
6. An individual who meets the requirements of the Act will be licensed as a funeral director in one of two categories, those who perform embalming and those who choose not to perform embalming.
7. Embalming, visitation or the arranging of a funeral is only available to the public through a licensed funeral establishment.
8. A funeral establishment must be managed and directly supervised by a licensed funeral director.
9. A transfer service may only provide for the removal, transportation or delivery of remains and the filing of necessary documentation. A transfer service need not be under the direction of a licensed funeral director.
10. The Bill also provides for inspections, freezing of assets, appointment of receivers and managers and restraining and cease and desist orders.
11. Telephone and door-to-door solicitation for the sale of funeral services or supplies is prohibited.
12. The Bill provides for regulations to deal with itemized price lists and consumer information.
13. The regulations also provide authority to prohibit funeral establishments from being located on or operated in connection with cemeteries or crematoria.
14. Funeral establishments and transfer services will be required under the regulations to contribute to a compensation fund to compensate consumers in the event of a defalcation.
15. A board of trustees will administer the compensation fund.
16. All moneys received for a prepaid funeral will be held together with income accrued in trust for the beneficiary until it is dispersed in accordance with the Act.
17. All prepaid contracts may be cancelled at any time prior to the services being delivered. If the contract is cancelled within thirty days of signing, no administration fee may be charged.

**Bill 30**

**1989**

**An Act respecting  
Funeral Directors and Establishments**

HER MAJESTY, by and with the advice and consent of the Legislative Assembly of the Province of Ontario, enacts as follows:

**1.** In this Act,

Definitions

“beneficiary” means a person for whom funeral services or supplies, or both, are to be provided under a contract or prepaid contract;

“Board” means the Board of Funeral Services;

“cemetery” means a cemetery within the meaning of the *Cemeteries Act, 1989*; 1989, c. ...

“Compensation Fund” means the Prepaid Funeral Services Compensation Fund established under the regulations;

“contract” means an agreement wherein a person provides or agrees to provide funeral services or supplies, or both or for the transportation of a dead human body, and includes prepaid contracts;

“depository” means a chartered bank, loan or trust company, Province of Ontario Savings Office or a credit union as defined in the *Credit Unions and Caisses Populaires Act*;

R.S.O. 1980,  
c. 102

“Director” means a director appointed under the *Ministry of Consumer and Commercial Relations Act*;

R.S.O. 1980,  
c. 274

“disbursements” means payments actually made by a funeral director or a person who operates a funeral establishment on behalf of a purchaser of funeral services or supplies, or both;



“embalming” means the preservation and disinfection of all or part of a dead human body by any means other than by refrigeration;

“equity share” means a share of a class of shares that carries a voting right either under all circumstances or under some circumstances that have occurred and are continuing;

“funeral” means a rite or ceremony in connection with the death of a person where the body is present;

“funeral director” means an individual who provides or directs the providing of funeral services;

“funeral establishment” means premises where funeral services are supplied;

1989, c. ... “funeral services” means the care and preparation of dead human bodies and the co-ordination of rites and ceremonies with respect to dead human bodies, but does not include services provided by a cemetery or crematorium owner under the *Cemeteries Act, 1989*;

“funeral supplies” means goods that are used in connection with the care and preparation of dead human bodies or the disposition of dead human bodies;

“income” means the interest or money earned, including the compounding thereof, by the investment of funds received under a prepaid contract;

“licence” means a licence issued under this Act and “licensed” has a corresponding meaning;

“Minister” means the Minister of Consumer and Commercial Relations;

“prearrangement” means an arrangement for the provision of specific funeral services, supplies or transportation of a dead human body on the death of a person who is alive at the time the arrangement is made;

“prepaid contract” means an agreement whereby a person contracts with a purchaser to provide or make provision for funeral services, funeral supplies, or both, or for the transportation of a dead human body, including disbursements, upon the death of a beneficiary, if any payment for the contract is made prior to the death of the beneficiary or the purchaser enters into an insurance contract or plan under which a licensee is to receive directly or indirectly the pro-

ceeds of the insurance policy upon the death of the beneficiary;

“prepayment” means the payment or the guarantee of a payment pursuant to a prepaid contract;

“prepayment funds” means the money deposited in trust under the provisions of this Act and the income therefrom and includes the proceeds of an insurance policy received by a licensee;

“prescribed” means prescribed by the regulations;

“Registrar” means the Registrar of the Board;

“regulations” means regulations made under this Act;

“transfer service” means a service to the public with respect to the disposition of dead human bodies, including the transportation of dead human bodies and the filling out of the necessary documentation with respect to the disposition of dead human bodies;


“Tribunal” means The Commercial Registration Appeal Tribunal.

**2.—**(1) There shall be a Registrar appointed by the Board Registrar  
for the purposes of this Act.

(2) The Registrar may exercise the powers and shall perform the duties conferred or imposed on the Registrar by or Powers of Registrar  
under this Act under the supervision of the Board.

(3) The Registrar shall maintain one or more registers in Registers  
which is entered,

- (a) the name of every person licensed under this Act;
- (b) any conditions and limitations imposed on a licence by the Registrar, a Committee or the Tribunal;
- (c) the fact and date of each revocation, suspension, cancellation or termination of a licence;
- (d) the fact and amount of each fine imposed by the Discipline Committee, except if the Discipline Committee directs that no entry with respect to a fine be made;

- (e) the fact of each reprimand made by the Discipline Committee, except if the Discipline Committee directs that no entry with respect to the reprimand be made; and
- (f) such other information in addition to that set out in clauses (a) to (e) as is prescribed. 

Inspection

(4) Any person has the right, during normal business hours, to inspect the registers maintained by the Registrar.

Copies

(5) The Registrar shall provide to any person, upon payment of a reasonable charge therefor, a copy of any part of the registers maintained by the Registrar.

Board continued

**3.—**(1) The Board of Funeral Services, a body corporate, is continued as a corporation without share capital.

Principal object

(2) The principal object of the Board is to regulate the practices of funeral directors and persons who operate funeral establishments and transfer services in accordance with this Act, the regulations and the by-laws in order that the public interest may be served and protected.

Additional objects

(3) For the purpose of carrying out its principal object, the Board has the following additional objects:

1. To establish, maintain and develop standards of knowledge and skill among funeral directors and persons who operate funeral establishments and transfer services.
2. To establish, maintain and develop standards of qualification and standards of practice for funeral directors and persons who operate funeral establishments and transfer services.
3. To establish, maintain and develop standards of professional ethics among funeral directors and persons who operate funeral establishments and transfer services.
4. To administer the Compensation Fund.
5. To oversee and inspect trust accounts that funeral establishments and transfer services are required by law to establish or maintain.
6. To mediate complaints between consumers and licensees.

- 7. To establish and develop standards for funeral establishments.
- 8. To perform such other duties and exercise such other powers as are imposed or conferred on the Board by or under any Act.

(4) For the purpose of carrying out its objects, the Board has the capacity and the powers of a natural person.

Capacity and powers of Board

- (5) The Board shall,
- Duties of Board
- (a) review the operation of this Act and the regulations and make recommendations to the Minister thereon;
  - (b) approve or set courses of study and examinations for the qualification of applicants for licences; and
  - (c) carry out such duties as are prescribed.

4.—(1) The Board shall be composed of the following members appointed by the Lieutenant Governor in Council:

Composition

- 1. A prescribed number of funeral directors, one of whom,
  - i. is not licensed to operate a funeral establishment,
  - ii. is not a director of a corporation that is licensed to operate a funeral establishment, and
  - iii. does not direct the operation of a funeral establishment.
- 2. A prescribed number of persons who are not funeral directors.

(2) The members of the Board shall be appointed to hold office for a term not exceeding three years and may be reappointed for further successive terms, but shall not be appointed or reappointed for more than six successive years.

Term of office

(3) A vacancy on the Board caused by the death, resignation, removal or incapacity to act of a member may be filled by the appointment by the Lieutenant Governor in Council of a person to hold office for the unexpired portion of the term of office of such member.

Vacancy



- Quorum (4) Five members of the Board, at least two of whom shall be members appointed under paragraph 2 of subsection (1), constitute a quorum.
- Officers (5) The Board shall appoint a chairperson and vice-chairperson and such other officers as are considered necessary from among the members of the Board.
- Expenses and remuneration of members of Board (6) The members of the Board,
- (a) appointed under paragraph 1 of subsection (1) shall be paid by the Board such expenses and remuneration as are prescribed; and
  - (b) appointed under paragraph 2 of subsection (1) shall be paid, out of the moneys appropriated therefor by the Legislature, such expenses and remuneration as are determined by the Lieutenant Governor in Council.
- Staff (7) The Board may employ such employees and retain such assistance as is necessary to perform the work of the Board and may determine their salary, remuneration and terms and conditions of employment.
- Meetings of Board (8) The Board shall meet at least four times a year.
- Continuation of Board members (9) The members of the Board who were in office immediately before the coming into force of this Act are continued in office until the expiration of their terms or until their offices otherwise become vacant.
- Annual report (10) The Board shall deliver to the Minister each year an annual report on the affairs of the Board and on the operation of the Compensation Fund.
- Idem (11) The Minister shall submit the annual report to the Lieutenant Governor in Council and shall then lay the report before the Assembly if it is in session or, if not, at the next session.
- Powers of Minister **5.** The Minister may, in addition to any other powers and duties conferred on the Minister by or under any Act,
- (a) review the activities of the Board;
  - (b) request the Board to undertake activities that, in the opinion of the Minister, are necessary and advisable to carry out the intent of this Act;

- (c) advise the Board with respect to the implementation of this Act and the regulations and with respect to the methods used or proposed to be used by the Board to implement policies and to enforce its by-laws and procedures.

**6.—**(1) The Board may pass by-laws relating to the administrative and domestic affairs of the Board not inconsistent with this Act and the regulations and, without limiting the generality of the foregoing,

By-laws

1. specifying the seal of the Board;
2. providing for the execution of documents by the Board;
3. respecting banking and finance;
4. fixing the financial year of the Board and providing for the audit of the accounts and transactions of the Board;
5. respecting the calling, holding and conducting of meetings of the Board and committees of the Board and the duties of members of the Board and committees of the Board;
6. providing for a code of ethics;
7. delegating to the Executive Committee such powers and duties of the Board as are set out in the by-laws, other than the power to make, amend or revoke regulations and by-laws;
8. respecting the calling, holding and conducting of meetings of licensees;
9. providing for the use of forms;
10. providing procedures for the making, amending and revoking of the by-laws;
11. respecting management of the property of the Board;
12. providing for the appointment, composition, powers and duties of committees in addition to those committees established under subsection 7 (1);

13. respecting the application of the funds of the Board and the investment and reinvestment of any of its funds not immediately required, and for the safe-keeping of its securities;
14. respecting membership of the Board in other organizations, the payment of annual assessments and provision for representatives at meetings;
15. respecting the appointment of inspectors by the Registrar for the purposes of this Act;
16. providing for meetings of the Board and committees, except in a proceeding in respect of a licence, by means of conference telephone or other communications equipment by means of which all persons participating in the meeting can hear each other, and a member of the Board or committee participating in a meeting in accordance with such by-law shall be deemed to be present in person at the meeting;
17. providing that the Board or a committee may act upon a resolution consented to by the signatures of all members of the Board or the committee except in a proceeding in respect of a licence, and a resolution so consented to in accordance with such a by-law is as valid and effective as if passed at a meeting of the Board or the committee duly called, constituted and held for that purpose;
18. providing for the payment of necessary expenses of the Board and committees of the Board in the conduct of their business;
19. providing for the Board to enter into arrangements on behalf of licensees with respect to the bonding of licensees and requiring the payment and remittance of premiums in connection therewith, setting levies that shall be paid by licensees and exempting licensees or any class thereof from all or any part of such levy;
20. providing for the establishment of group insurance plans, other than for professional liability, in which licensees may participate on a voluntary basis;
21. regarding such other matters as are entailed in carrying on the business of the Board.

(2) A copy of the by-laws made under subsection (1) and amendments thereto, Distribution of by-laws

(a) shall be forwarded to the Minister;

(b) shall be forwarded to each licensee; and

(c) shall be available for public inspection in the office of the Board.

(3) At any time before or after receiving a copy of a by-law made under subsection (1), the Minister may, by an order in writing, revoke or amend the by-law. Minister may revoke or amend by-laws

(4) Despite subsection (3), a by-law is effective until so revoked or amended by the Minister and no act done or right acquired under any such by-law before revocation or amendment by the Minister is prejudicially affected by the revocation or amendment. Idem

**7.—**(1) The Board shall establish and appoint the following committees: Establishment of committees

1. Executive Committee.
2. Licensing Committee.
3. Complaints Committee.
4. Discipline Committee.
5. Compensation Fund Committee.

(2) The Board may establish such other committees in addition to those established under subsection (1) as the Board from time to time considers necessary. Idem

(3) If one or more vacancies occur in the membership of a committee, the members remaining constitute the committee so long as their number is not fewer than a quorum of the committee. Vacancies

**8.—**(1) The Executive Committee shall be composed of three persons who are members of the Board, one of whom shall be a person appointed under paragraph 2 of subsection 4 (1). Executive Committee

(2) The Board shall name one member of the Executive Committee to be chairperson. Chairperson



Quorum (3) Two members of the Executive Committee constitute a quorum.

Powers of Executive Committee (4) The Board may delegate to the Executive Committee the authority to exercise any power or perform any duty of the Board, other than to make, amend or revoke a by-law.

Urgent matters (5) Subject to ratification by the Board at its next ensuing meeting, the Executive Committee may take action upon any other matter that requires immediate attention between meetings of the Board, other than to make, amend or revoke a by-law.

Licensing Committee **9.**—(1) The Licensing Committee shall be composed of three persons who are members of the Board, one of whom shall be a person appointed under paragraph 2 of subsection 4 (1).

Chairperson (2) The Board shall name one member of the Licensing Committee to be chairperson.

Quorum (3) Two members of the Licensing Committee constitute a quorum.

Complaints Committee **10.**—(1) The Complaints Committee shall be composed of three persons who are members of the Board, one of whom shall be a person appointed under paragraph 2 of subsection 4 (1).

Chairperson (2) The Board shall name one member of the Complaints Committee to be chairperson.

Quorum (3) Two members of the Complaints Committee constitute a quorum.

Discipline Committee **11.**—(1) The Discipline Committee shall be composed of four members of the Board, two of whom shall be persons appointed under paragraph 2 of subsection 4 (1).

Chairperson (2) The Board shall name one member of the Discipline Committee to be chairperson.

Quorum (3) Three members of the Discipline Committee constitute a quorum.

Majority vote (4) All disciplinary decisions of the Discipline Committee require the vote of a majority of the members of the Discipline Committee present at the hearing.

(5) If the Discipline Committee commences a hearing and a member of the Discipline Committee is unable to continue to act, the remaining members may complete the hearing despite the absence of the member.

Disability of member

**12.**—(1) The Compensation Fund Committee shall be composed of three persons who are members of the Board, two of whom shall be persons appointed under paragraph 2 of subsection 4 (1).

Compensation Fund Committee

(2) The Board shall name one member of the Compensation Fund Committee to be chairperson.

Chairperson

(3) Two members of the Compensation Fund Committee constitute a quorum.

Quorum

**13.**—(1) The Licensing Committee shall consider all matters that are referred to it by the Registrar under section 22.

Powers and duties of Licensing Committee

(2) The Licensing Committee may make recommendations to the Registrar with respect to,

Recommendations

(a) the eligibility of an applicant for a licence or a renewal of a licence;

(b) issuing or refusing to issue a licence to an applicant for a licence or a renewal of a licence;

(c) issuing a licence or a renewal of a licence to an applicant subject to conditions;

(d) suspending or revoking the licence of a licensee;

(e) the desirability of requiring an applicant for a licence or a renewal of a licence or a licensee to take and pass such additional training or part thereof that may be prescribed; or

(f) exempting an applicant for a license or a renewal of a licence or a licensee from any licensing requirement.

**14.**—(1) The Complaints Committee shall consider and investigate complaints regarding the conduct or actions of any licensee, but no action shall be taken by the Complaints Committee under subsection (2) unless,

Duties of Complaints Committee

(a) a written complaint has been filed with the Registrar and the licensee whose conduct or actions are being investigated has been notified of the com-

plaint and given at least two weeks in which to submit in writing to the Committee any explanations or representations the licensee may wish to make concerning the matter; and

- (b) the Committee has examined or has made every reasonable effort to examine all records and other documents relating to the complaint.

Idem

(2) The Complaints Committee in accordance with the information it receives may,


- (a) consider all or part of the matter;
- (b) direct that all or part of the matter be referred to the Discipline Committee; and
- (c) subject to subsection (9), take or recommend such action that it considers appropriate in the circumstances and that is not inconsistent with this Act, the regulations or the by-laws.

Decisions  
and reasons

(3) The Complaints Committee shall advise the Registrar in writing of the action it proposes to take or recommend and its reasons therefor.



Notice

(4) Subsections (3) and (6) do not apply to a matter that is referred to the Discipline Committee. 

Hearing

(5) The Complaints Committee is not required to hold a hearing or to afford any person an opportunity for a hearing or to make oral submissions before it prior to it taking action or making a recommendation under this section.

Notice

(6) The Registrar shall send to the complainant and to the person complained against by prepaid first class mail a copy of the proposal of the Complaints Committee and its reasons therefor, if any, together with notice that informs the person to whom it is sent that the person is entitled to a hearing by the Tribunal if the person mails or delivers to the Registrar and to the Tribunal, within fifteen days after the notice is served on the person, notice in writing requiring a hearing and the person may so require such a hearing.

No hearing

(7) If a complainant or the person complained against does not require a hearing by the Tribunal, the Complaints Committee may carry out the proposal stated in the notice to the complainant or the person complained against.

(8) If the complainant or the person complained against requires a hearing, the Tribunal shall appoint a time for and hold a hearing. Hearing

(9) After holding a hearing, the Tribunal may by order direct the Complaints Committee to carry out the proposal or refrain from carrying out the proposal and to take such action as the Tribunal considers the Complaints Committee ought to take in accordance with this Act and the regulations and, for such purposes, the Tribunal may substitute its opinion for that of the Complaints Committee. Order

(10) The Tribunal may attach such conditions to its order as it considers proper to give effect to the purposes of this Act. Conditions

(11) The Registrar, the person who required the hearing and such other persons as the Tribunal may specify are parties to proceedings before the Tribunal under this section. Parties

**15.** Despite subsection 14 (1), the Board or the Executive Committee may direct the Discipline Committee to hold a hearing and determine any allegation of professional misconduct or incompetence on the part of a funeral director. Reference by Board or Executive Committee

**16.—(1)** The Discipline Committee shall, Duties of Discipline Committee

- (a) when so directed by the Board, Executive Committee or Complaints Committee, hear and determine allegations of professional misconduct or incompetence against a funeral director;
- (b) hear and determine matters referred to it by the Board, Registrar, Executive Committee or Complaints Committee under this Act with respect to funeral directors; and
- (c) perform such other duties as are assigned to it by the Board.

(2) A funeral director may be found guilty of professional misconduct by the Discipline Committee if, Professional misconduct

- (a) the funeral director has been found guilty of an offence that is relevant to the funeral director's suitability to practise as a funeral director, upon proof of such conviction; or
- (b) the funeral director has been guilty in the opinion of the Discipline Committee of professional misconduct as prescribed.



Incompetence (3) The Discipline Committee may find a funeral director to be incompetent if in its opinion,

- (a) the funeral director has displayed in the providing or in directing the providing of funeral services or funeral supplies or in performing or supervising the performing of an embalming, a lack of knowledge, skill or judgment of a nature or to an extent that demonstrates the funeral director is unfit to continue as a funeral director;
- (b) the funeral director is suffering from a physical or mental condition or disorder of a nature and extent that makes it desirable in the interest of the public that the funeral director no longer be permitted to continue as a funeral director.

Examinations (4) If the Discipline Committee is required to hear and determine allegations of incompetence under clause (3) (b), the Discipline Committee may require the funeral director who is the subject of the hearing to submit to a physical or mental examination, or both, by such persons as the Board designates.

Suspension of licence (5) If a funeral director fails to submit to an examination required under this section, the Discipline Committee may order that the licence of the funeral director be suspended until the funeral director submits to the examination.

Evidence (6) A legally qualified medical practitioner who conducts a physical or mental examination required under this section is not compellable to produce at the hearing his or her case histories, notes or any other records that may constitute medical evidence.

Report (7) A person who conducts an examination under this section shall upon completing the examination forthwith prepare and deliver to the Registrar a report that contains facts, findings and conclusions and suggested treatment, if any.

Idem (8) A report that is prepared as a result of an examination that is conducted under this section shall be delivered by the Registrar to the funeral director,

- (a) if the examination is required prior to the hearing, at least five days prior to the commencement of the hearing; or

- (b) if the examination is required during the course of the hearing, at least five days prior to its introduction as evidence.

(9) A report that is prepared as a result of an examination that is conducted under this section is receivable as evidence without proof of its making or the signature of the person making the report. Idem

(10) A party to the hearing who is not tendering a report as evidence has the right to summon and cross examine the person who made the report on the contents of the report. Right to cross examine

(11) If the Discipline Committee finds a funeral director guilty of professional misconduct or incompetence, it may by order do any of the following things or any combination of the following things: Powers of Discipline Committee

1. Revoke the licence of the funeral director.
2. Suspend the licence of the funeral director for a stated period.
3. Impose restrictions on the licence of the funeral director for a period and subject to the conditions specified by the Discipline Committee.
4. Reprimand the funeral director.
5. Impose such fine as the Discipline Committee considers appropriate to a maximum of \$10,000 to be paid by the funeral director to the Treasurer of Ontario for payment into the Consolidated Revenue Fund.
6. Direct that the imposition of a penalty be suspended or postponed for the period and upon the terms specified by the Discipline Committee.

(12) If the Discipline Committee imposes a fine or reprimands a funeral director, the Discipline Committee may direct that the fine or the reprimand not be entered in the applicable register. Entry on register

(13) If the Discipline Committee is of the opinion that the commencement of the proceedings was unwarranted, the Committee may order that the Board reimburse the funeral director for the funeral director's costs or such portion thereof as the Discipline Committee fixes. Costs

Stay on  
appeal for  
incompetence

(14) If the Discipline Committee revokes, suspends or restricts a licence on the grounds of incompetence, the decision takes effect immediately despite the fact that an appeal is taken from the decision, unless the Tribunal otherwise orders and, where the Tribunal is satisfied that it is appropriate in the circumstances, the Tribunal may so order.

Stay on  
appeal for  
professional  
misconduct

(15) If the Discipline Committee revokes, suspends or restricts a licence on grounds other than for incompetence, the order does not take effect until the time for appeal from the order has expired without an appeal being taken or, if taken, the appeal has been disposed of or abandoned, unless the Discipline Committee otherwise orders, and, where the Committee considers that it is appropriate for the protection of the public, the Committee may so order.

Service of  
decision of  
Discipline  
Committee

(16) If the Discipline Committee finds a funeral director guilty of professional misconduct or incompetence, a copy of the decision shall be served upon the person complaining in respect of the conduct or action of the funeral director.

Continuation  
on expiry of  
Committee  
membership

(17) If a proceeding is commenced before the Discipline Committee and the term of office on the Board or on the Committee of a member sitting for the hearing expires or is terminated before the proceeding is disposed of but after evidence has been heard, the member shall be deemed to remain a member of the Discipline Committee for the purpose of completing the disposition of the proceeding in the same manner as if his or her term of office had not expired or been terminated.

Parties to  
discipline  
proceedings

**17.—(1)** In proceedings before the Discipline Committee, the Board and the funeral director whose conduct is being investigated in the proceedings are parties to the proceedings.

Examination  
of  
documentary  
evidence

(2) A funeral director whose conduct is being investigated in proceedings before the Discipline Committee shall be afforded an opportunity to examine before the hearing any written or documentary evidence that will be produced or any report the contents of which will be given in evidence at the hearing.

Members  
holding  
hearing not  
to have  
taken part in  
investigation,  
etc.

(3) Members of the Discipline Committee holding a hearing shall not have taken part before the hearing in any investigation of the subject-matter of the hearing other than as a member of the Board considering the referral of the matter to the Discipline Committee or at a previous hearing of the Committee.

(4) Members of the Discipline Committee shall not communicate directly or indirectly in relation to the subject-matter of the hearing with any person or with any party or representative of a party except upon notice to and opportunity for all parties to participate.

No  
communi-  
cation

(5) The Discipline Committee may seek legal advice from an adviser independent from the parties and, in such case, the nature of the advice shall be made known to the parties in order that they may make submissions as to the law.

Advice

(6) The oral evidence taken before the Discipline Committee shall be recorded and, if so required, copies or a transcript thereof shall be furnished only to the parties at the cost to the parties.

Recording of  
evidence

(7) Documents and things put in evidence at a hearing of the Discipline Committee shall, upon the request of the person who produced them, be released to the person by the Committee within a reasonable time after the matter in issue has been finally determined.

Release of  
documentary  
evidence

**18.—**(1) A party to proceedings before the Discipline Committee may appeal from its decision or order to the Tribunal.

Appeal to  
Tribunal

(2) Subsections 14 (6) to (11) apply with necessary modifications to an appeal to the Tribunal from a decision or order of the Discipline Committee.

Application

**19.—**(1) No person shall act or imply that the person is available to act as a funeral director unless the person is licensed to do so.

Licence  
required

(2) No person shall operate or imply that the person is available to operate a funeral establishment unless the person is licensed to do so.

Idem

(3) No person shall operate or imply that the person is available to operate a transfer service unless,

Idem

(a) the person is licensed to do so; or

(b) the person is licensed to operate a funeral establishment and the transfer service is operated as part of the normal operation of the funeral establishment.

(4) No person other than a funeral director who is licensed to do so shall perform or imply that the person is available to perform embalming.

Idem



Place of  
business

(5) No person shall operate a funeral establishment or transfer service except at a place that is named in the licence of the person.

Funeral  
services

(6) No funeral director shall offer funeral services except through a licensed funeral establishment.

Idem

(7) No funeral director shall offer funeral services to the public except through an operator of a funeral establishment who is licensed to do so.

Funeral  
establishment

(8) No operator of a funeral establishment shall employ a person as a funeral director unless the person is licensed as a funeral director.

Direction and  
management

(9) Every operator of a funeral establishment shall ensure that the funeral establishment is managed and directly supervised by a funeral director who is responsible for the conduct or misconduct of any person to whom the funeral director delegates responsibilities.

Idem

(10) No funeral director shall manage and directly supervise the operation of more than one funeral establishment except as prescribed.

Corporation

(11) Each corporation that is licensed to operate a funeral establishment shall ensure that at least one of the directors of the corporation is a funeral director.

Exceptions

(12) Subsections (1) and (4) do not apply,

- (a) to a student in a training program who is working under the supervision and in the presence of a funeral director; or
- (b) to a student who is enrolled in a recognized course of funeral services education and who is working under the supervision and in the presence of the instructor of the course.

Idem

(13) Subsection (4) does not apply to a person employed in a recognized school of medicine or anatomy while so employed.

Application

**20.—(1)** A person may apply to the Registrar for a licence to operate a funeral establishment or to operate a transfer service.

(2) A person who has successfully completed the educational requirements that are prescribed may apply to the Registrar for a licence as a funeral director. Idem

(3) An applicant is entitled to a licence or a renewal of a licence as a funeral director or to operate a funeral establishment or to operate a transfer service except if, Requirement

(a) the applicant cannot reasonably be expected to be competent or financially responsible in the conduct of the applicant's business;

(b) the past or present conduct of the persons referred to in subsection (4) affords reasonable grounds for belief that the applicant will not operate in accordance with the law and with integrity and honesty;

(c) the applicant or an employee or agent of the applicant makes a false statement or provides a false statement in an application for a licence;

(d) the applicant is carrying on activities that are, or will be if the applicant is licensed, in contravention of this Act or the regulations;

(e) the applicant will, if licensed, be carrying on activities under this Act and the regulations that are in contravention of another Act or a municipal by-law; or

(f) in the case of a corporation that operates a funeral establishment, no director of the corporation is a funeral director.

(4) Clause (3) (b) applies to the following persons: Idem

1. The applicant.
2. An officer or director of the applicant.
3. A person holding more than 10 per cent of the equity shares of the applicant or an officer or director of such person.
4. Any person having a beneficial interest in the operation of the business of the applicant or licensee.

(5) The Registrar shall issue a licence as a funeral director, to operate a funeral establishment or to operate a transfer service, as the case requires, to every applicant therefor who Issue

pays the fee that is prescribed, complies with this Act and the regulations and is not disentitled under subsection (3).

## Conditions

(6) A licence is subject to such conditions as may be consented to by the applicant, imposed by the Tribunal or prescribed.

## Refusal to issue

**21.**—(1) Subject to section 22, the Registrar may refuse to issue a licence to an applicant if the applicant is not entitled to a licence under subsection 20 (3).

## Refusal to renew

(2) Subject to section 22, the Registrar may refuse to renew or may suspend or revoke a licence,

(a) for any reason that would disentitle the licensee to a licence under subsection 20 (3) if the licensee were an applicant;

(b) if the licensee is in breach of a condition of the licence; or

(c) if the licensee is a corporation and the shareholders of the corporation have changed in the manner and to the extent prescribed.

## Fees

↓  
(3) Subject to section 22, the Registrar shall refuse to issue or renew a licence if the applicant has not paid the fee that is prescribed. ↑

## Proposal

**22.**—(1) If the Registrar proposes to refuse to issue or renew a licence, proposes to issue a licence subject to conditions or proposes to suspend or revoke a licence, the Registrar shall serve notice of the proposal, together with written reasons therefor, on the applicant or the licensee.

## Notice

(2) A notice under subsection (1) shall inform the applicant or licensee that the applicant or licensee is entitled to a hearing by the Tribunal if the applicant or licensee mails or delivers to the Registrar and to the Tribunal, within fifteen days after the notice is served on the applicant or licensee, notice in writing requiring a hearing and the applicant or licensee may so require such a hearing.

## No hearing

(3) If an applicant or licensee does not require a hearing by the Tribunal, the Registrar may carry out the proposal stated in the notice to the applicant or licensee.

## Hearing

(4) If an applicant or licensee requires a hearing, the Tribunal shall appoint a time for and hold a hearing.

(5) After holding a hearing, the Tribunal may by order direct the Registrar to carry out the proposal or refrain from carrying out the proposal and to take such action as the Tribunal considers the Registrar ought to take in accordance with this Act and the regulations and for such purposes the Tribunal may substitute its opinion for that of the Registrar.

Order

(6) The Tribunal may attach such conditions to its order or to the licence as it considers proper to give effect to the purposes of this Act.

Conditions

(7) The Registrar, the applicant or licensee who has required the hearing and such other persons as the Tribunal may specify are parties to proceedings before the Tribunal under this section.

Parties

(8) The Registrar may cancel a licence upon the request in writing of the licensee and the surrender of the licence by the licensee.

Cancellation

(9) The Registrar may refer any matter that deals with licensing to the Licensing Committee for their recommendations.

Referral

**23.**—(1) A person who is refused a licence or who is refused a renewal of a licence may apply in writing to the Registrar for the issuance of a licence only if at least one year has passed since the refusal.

Application

(2) A person whose licence is revoked under this Act or whose registration was cancelled under a predecessor of this Act may apply in writing to the Registrar for the issuance of a licence only if at least one year has passed since the revocation or cancellation.

Idem

(3) A person whose licence is suspended under this Act or whose registration was suspended under a predecessor of this Act, for more than one year, may apply in writing to the Registrar for the removal of the suspension only if at least one year has passed since the suspension.

Idem

**24.**—(1) If the Registrar proposes to suspend or revoke a licence, the Registrar may, if the Registrar considers it to be necessary in the public interest, by order, temporarily suspend the licence and the order shall take effect immediately.

Temporary order

(2) If a hearing is required with respect to a proposal to suspend or revoke a licence, the order expires fifteen days after the date of the notice requiring the hearing unless the hearing is commenced, in which case the Tribunal holding the

Hearing



hearing may extend the time of expiration until the hearing is concluded.

No licence

(3) If the Registrar by order temporarily suspends a licence under this section or section 22, the licensee shall during the term of the suspension be considered not to be licensed under this Act.

Stay

R.S.O. 1980,  
c. 274

**25.** Despite the fact that a licensee appeals from an order of the Tribunal under section 11 of the *Ministry of Consumer and Commercial Relations Act*, the order takes effect immediately but the Tribunal may grant a stay until the disposition of the appeal.

Continuation

**26.** If in the time prescribed therefor or, if no time is prescribed before the expiry of the licensee's licence, a licensee applies in the manner prescribed for renewal of the licence and pays the fee prescribed, the licence shall be deemed to continue,

(a) until the renewal is granted; or

(b) if the licensee is served with a notice that the Registrar proposes to refuse to grant the renewal, until the time for giving notice requiring a hearing has expired and, if a hearing is required, until the Tribunal has made its order.

Advertising

**27.—(1)** If the Director or the Registrar believes, on reasonable and probable grounds, that a person licensed under this Act has made a false or misleading public representation or that a representation is in contravention of this Act or the regulations, the Director or the Registrar shall order the person to stop making the representation and in the order shall set out the reasons for the order.

Compliance  
with order

(2) A person who receives an order under subsection (1) shall immediately comply with the order and shall refrain from making the representation, in any form, in the future.

Appeal

(3) Any person who receives an order under subsection (1) may appeal the order to the Tribunal.

Stay of order

(4) The Tribunal may issue a stay of any order made by the Director or Registrar under subsection (1).

Repayment

**28.** If a person is entitled to the repayment of money paid for or on account of funeral services, the operator of the funeral establishment, the funeral director who managed or manages the operation of the funeral establishment and any

funeral director in the employ of the operator of the funeral establishment who received the money or any part thereof are liable jointly and severally with any other person who is liable for the repayment of the money.

**29.** A licence is not required with respect to rites and ceremonies traditionally provided at a place of worship. Place of worship



**30.**—(1) No person other than a person who is licensed to operate a funeral establishment or a transfer service and who is a participant in good standing in the Compensation Fund shall enter into or offer to enter into a prepaid contract with a purchaser. Prepaid contracts

(2) Subsection (1) does not apply to a person selling funeral supplies under the authority of the *Cemeteries Act, 1989*. Idem  
1989, c. ...

**31.**—(1) No licensee shall enter into a prepaid contract that contains a provision for the payment of interment rights in a cemetery lot. Contracts

(2) All goods or services for which a licensee accepts payment in respect of one beneficiary shall be included in one prepaid contract. One contract

(3) No licensee shall enter into a prepaid contract that guarantees the price of any goods or services in the contract unless the price of all goods and services included in the contract are guaranteed. Guarantee

 **32.**—(1) Prior to the death of the beneficiary, the purchaser or a person designated in the contract by the purchaser may cancel the contract at any time. Cancellation 

(2) Prior to the death of the beneficiary but after the death of the purchaser, the beneficiary or the beneficiary's personal representative may cancel the contract at any time. Idem

(3) After the death of the beneficiary, only the beneficiary's personal representative may at any time cancel the contract prior to the delivery of all the services contracted for. Idem

(4) Subsections (1), (2) and (3) apply to contracts entered into before this Act comes into force. Idem

**33.** No person shall charge or accept any payment with respect to a prearrangement. Prearrangement fees

**34.**—(1) Every person who receives a payment under a prepaid contract shall hold the amount of the payment Trust

together with all income accrued thereon in trust until it is disbursed in accordance with this Act and the regulations.

Cancellation

(2) If a prepaid contract is cancelled, the person holding the funds in trust under the contract shall forthwith pay the funds and all income accrued thereon to,

- (a) if the prepaid contract is cancelled prior to the death of the beneficiary, the purchaser or the person set out in the contract;
- (b) if the prepaid contract is cancelled prior to the death of the beneficiary but after the death of the purchaser, the beneficiary; or
- (c) if the prepaid contract is cancelled after the death of the beneficiary, the estate of the beneficiary.

Deductions

(3) If a prepaid contract is cancelled after thirty days of the entering into of the contract, the person paying under subsection (2) may deduct from the amount paid such fees as are prescribed.

Application

(4) Subsection (1) does not apply to a payment made to an insurer under an insurance contract or plan.

Repayment

**35.**—(1) If a prepaid contract is fulfilled, the balance, if any, of the prepayment funds that are in excess of the cost of delivering the services and supplies contracted for shall be paid to the beneficiary's estate forthwith despite any contrary provision in the contract.

Costs

(2) The cost of delivering the services and supplies required under a prepaid contract shall not exceed the amount that would otherwise be charged for the same services and supplies if there had not been prepayment.

Contract requirements

**36.**—(1) A prepaid contract is not enforceable by an operator of a funeral establishment or transfer service unless,

- (a) it is written, signed by both parties and complies with the regulations;
- (b) it sets out the purchaser's cancellation rights under this Act; and
- (c) the operator delivers a signed copy of the contract to the purchaser at the time the contract is made.

(2) An operator of a funeral establishment or transfer service who receives money under a contract that is not enforceable because of the application of this section shall refund to the purchaser, immediately upon written demand, with interest at the prescribed rate, all money received. Refund with interest

(3) Subsection (2) does not apply after the supplies and services have been provided under the contract. Exception

**37.** Every licensee shall make such information as is prescribed available to the public in the manner and form prescribed. Public information

**38.—**(1) No person shall contact, in any way, a person in a hospital, nursing home or such other institution as is prescribed for the purpose of suggesting that a contract be made. Soliciting prohibited

(2) No person shall contact, by telephone or in person, a person for the purpose of suggesting that a contract be made. Idem

(3) This section does not prohibit, Exception

(a) a contact made at the request of the person being contacted; or

(b) a contact with a licensee.

**39.—**(1) No person shall operate a funeral establishment or transfer service in conjunction with the owner of a cemetery or crematorium in a manner that is prescribed. Prohibition

(2) No person shall operate a funeral establishment or transfer service from locations that are prescribed. Idem

**40.—**(1) If the Director or the Board is of the opinion that a person is not complying with this Act or the regulations, despite the imposition of a penalty in respect of the non-compliance and despite the fact that another remedy may be available, the Director or the Board may apply to a judge of the High Court for an order directing the person to comply. Restraining order

(2) Upon an application under subsection (1), the judge may make the order applied for or such other order as the judge thinks appropriate. Idem

(3) An appeal lies to the Divisional Court from an order made under subsection (2). Idem

**41.—**(1) If the Director has reasonable and probable grounds to believe that a licensee is doing or is about to do Freezing assets



something that will jeopardize the public interest, the Director may direct any person holding, having on deposit or controlling assets of the licensee or trust funds under the control of the licensee to hold the assets or trust funds until further instructions are received from the Director to release a particular asset or trust fund from the direction.

Scope of direction

(2) In the case of a bank or a corporation, a direction under subsection (1) applies only to the offices, branches or agencies thereof named in the direction.

Application for directions

(3) Any person named in a direction issued under subsection (1), if in doubt as to the application of the direction to particular assets or trust funds, may apply to the Director for an order of clarification.

Revocation or amendment of direction

(4) On an application of a licensee or any other person having an interest therein, the Director may make an order on such conditions as are set out in the order revoking the direction or consenting to the release of a particular asset or trust fund from the direction.

Appeal

(5) A person affected by a direction or order of the Director made under this section or a refusal to make an order may appeal to the Tribunal.

Application

(6) Subsections 14 (6) to (11) apply with necessary modifications to an appeal to the Tribunal from a direction or order of the Director.

Inspectors

**42.**—(1) The Registrar or a Director may appoint inspectors for the purpose of determining whether there is compliance with this Act and the regulations.

Certificate of appointment

(2) An inspector exercising a power under this Act shall, on request, produce his or her certificate of appointment.

Inspections

**43.**—(1) For the purpose of ensuring compliance with this Act and the regulations, an inspector may,

- (a) enter any place at any reasonable time;
- (b) request the production for inspection of documents or things that may be relevant to the inspection;
- (c) inspect and, upon giving a receipt therefor, remove, for the purpose of making copies or extracts, documents or things relevant to the inspection;

- (d) inquire into negotiations, transactions, loans or borrowings of a licensee and into assets owned, held in trust, acquired or disposed of by a licensee that are relevant to an inspection;
- (e) conduct such tests as are reasonably necessary; and
- (f) remove materials or substances for examination or test purposes subject to the licensee or other occupant of the premises being notified thereof.

(2) Subsection (1) does not apply to confer a power of entry to a room actually used as a dwelling without the consent of the occupier. Entry to dwellings

(3) A justice of the peace may issue a warrant authorizing the person named in the warrant, Warrant

- (a) to do anything set out in clause (1) (a), (c), (e) or (f);
- (b) to search for and seize any document or thing relevant to the inspection; or
- (c) to enter and search a room actually used as a dwelling.

(4) A warrant may be issued under subsection (3) if the justice of the peace is satisfied on information under oath that, in the case of a warrant to be issued under, Requirements for warrant to issue

- (a) clause (3) (a), an inspector has been prevented from doing anything permitted under clause (1) (a), (c), (e) or (f) or there is reasonable ground to believe that an inspector may be prevented from doing any of those things;
- (b) clause (3) (b), to search for and seize a document or thing that there is reasonable ground to believe will afford evidence relevant to a contravention of this Act or the regulations; or
- (c) clause (3) (c), it is necessary that a room actually used as a dwelling be entered for the purposes of carrying out an inspection or there is, in such a room, a document or thing that there is reasonable ground to believe is relevant to an inspection under this Act.

- Execution of warrant (5) A warrant issued under this section shall specify the hours and days during which it may be executed.
- Expiry (6) Unless renewed, a warrant under this section expires not later than thirty days after the date on which it is made.
- Notice not required (7) A warrant under this section may be issued or renewed before or after expiry upon application without notice.
- Experts (8) An inspector is entitled to call upon such experts as are necessary to assist the inspector in carrying out an inspection under this Act.
- Assistance (9) A person doing anything under the authority of a warrant issued under this section is authorized to call on such police officers to assist and to use such force as is necessary in the execution of the warrant.
- Copies (10) An inspector taking material in order to copy it shall make the copy with reasonable dispatch and shall promptly return the material taken.
- Admissibility of copies (11) Copies of, or extracts from, documents and things removed under this section and certified as being true copies of, or extracts from, the originals by the person who made them are admissible in evidence to the same extent as, and have the same evidentiary value as, the documents or things of which they are copies or extracts.
- Obstruction of inspector **44.**—(1) No person shall obstruct an inspector in carrying out an inspection under this Act or withhold, destroy, conceal or refuse to provide any relevant information or thing required for the purpose of the inspection.
- Facilitating inspection (2) It is a condition of each licence issued under this Act that the licensee facilitate an inspection relevant to the licence.
- Appointment of receiver and manager **45.**—(1) The Director or Registrar may apply to a judge or a local judge of the Supreme Court for the appointment of a receiver and manager of an involved funeral establishment or transfer service if,
- (a) the Director or Registrar has reasonable and probable grounds to believe that a person licensed under this Act has failed or is about to fail to provide contracted and paid for funeral services to a client;
  - (b) the Director or Registrar is advised that a proposal to suspend or revoke a licence under section 21 or

to temporarily suspend a licence under section 24 has been made; or

- (c) the Director has directed or is about to make a direction under section 41.

(2) A judge, upon an application being made under subsection (1), without notice or, if the judge considers that notice should be given, upon such notice as the judge stipulates, may, if it is considered in the public interest and subject to the *Bankruptcy Act* (Canada), appoint a receiver and manager to take possession and control of the business of the person in respect of whom an action referred to in subsection (1) applies for a period not exceeding sixty days.

Idem

R.S.C. 1985,  
c. B-3

(3) An appointment made under subsection (2) may be extended, upon an application without notice, for an additional period not exceeding sixty days.

Extension

(4) A receiver and manager appointed under subsection (2) shall take possession and control of the assets of the business and shall thereafter conduct the business and take such steps as in the opinion of the receiver and manager should be taken toward its rehabilitation.

Receiver and  
manager  
taking  
control

(5) For the purposes of subsection (4), the receiver and manager have all the powers of the board of directors of the corporation, if the business is a corporation, or of a sole proprietor or all partners if the business is not a corporation and, without limiting the generality of the foregoing, the receiver and manager may,

Idem

- (a) exclude the directors, officers, servants and agents of the business from the premises and property of the business; and
- (b) carry on, manage and conduct the operations of the business and in the name of the business preserve, maintain, realize, dispose of and add to the property of the business and receive the incomes and revenues of the business.

(6) An order made under this section may be enforced in the same manner as any order or judgment of the Supreme Court and may be varied or discharged upon an application made by notice.

Enforcement  
of order

(7) Upon an application being made under this section, the rules of practice of the Supreme Court apply.

Rules of  
practice



Regulations

**46.**—(1) The Lieutenant Governor in Council may make regulations,

1. prescribing the manner in which trust accounts shall be kept and accounted for;
2. providing for the inspection of trust accounts;
3. prescribing the duties of depositories with respect to trust funds held under this Act;
4. requiring receipts to be given by licensees with respect to contracts;
5. providing for the establishment, maintenance and administration of the Compensation Fund;
6. prescribing provisions that relate to the investing and paying out of moneys from the Compensation Fund;
7. providing for the payment of levies into the Compensation Fund and prescribing the amounts of levies;
8. providing for appeals from a refusal to pay out of the Compensation Fund;
9. governing the powers and duties of the trustee administering the Compensation Fund;
10. requiring the purchase of bonds for the purpose of indemnifying the Compensation Fund;
11. prescribing the terms and amounts of bonds;
12. providing for payment out of the Compensation Fund of claims and procedures to be followed with respect thereto;
13. requiring participation in the Compensation Fund by licensees;
14. on any matter relating generally to the purchase, renewal or terms of a bond or the disposition of payments received thereunder;
15. governing the form and content of contracts and receipts, including the cancellation of contracts;

16. prescribing the terms that a contract shall be deemed to contain;
17. prescribing conditions under which contracts may be assigned and prohibiting assignments that are not in accordance with the prescribed conditions;
18. regulating, limiting or prohibiting the soliciting of contracts;
19. governing the term during which each class or type of licence is valid;
20. exempting any person or thing or class of person or thing from the application of any provision of this Act or the regulations and prescribing conditions for any exemption;
21. authorizing persons, other than funeral directors, to perform specified acts in the providing of funeral services under the supervision or direction of a funeral director;
22. governing the books, accounts, records and information that shall be kept by licensees and that shall be filed with the Registrar;
23. prescribing fees and requiring the payment of fees;
24. prescribing forms and providing for their use;
25. prescribing educational requirements and testing requirements on an initial and ongoing basis for licensees and employees of licensees;
26. governing applications for licences and renewals of licences;
27. prescribing classes of licences;
28. governing the requirements and qualifications for the issuing of licences and prescribing the conditions for obtaining and maintaining a licence;
29. governing standards of practice and operation for licensees;
30. respecting the methods and materials that may be used in providing funeral services;

31. prohibiting or governing the advertising of funeral services or funeral supplies and prohibiting or governing the display of funeral supplies to the public;
32. governing the construction, location, equipment, maintenance, repairs, additions and alterations to funeral establishments and governing the information, plans and materials to be furnished to the Registrar with respect thereto;
33. governing the equipment and practices. including hygienic practices, with respect to the embalming, transportation, preparation and disposal of dead human bodies;
34. regulating, controlling and prohibiting the use of terms, titles or designations by licensees;
35. prescribing practices or actions that are evidence of incompetence or lack of honesty and integrity;
36. governing the availability and display of funeral services and funeral supplies;
37. prescribing specifications and minimum requirements for funeral services and funeral supplies;
38. prescribing, for any notice required to be given under this Act, the type of notice and the manner in which it is to be given;
39. governing the payment of money into and out of trust funds, including the time within which and the circumstances under which payments are to be made;
40. providing for the maintenance and inspection of registers of persons who are licensed;
41. prescribing anything that is referred to in this Act as being prescribed.

Limited  
application

(2) A regulation made under this Act may be of limited application.

Retroactive

(3) A regulation made under this section may be retroactive in effect and may apply to contracts entered into before this Act comes into force.

Offence

**47.—**(1) Every person who,

- (a) furnishes false, misleading or incomplete information in an application under this Act or in a statement or return required to be furnished under this Act or the regulations;
- (b) fails to comply with a direction or order made under this Act; or
- (c) contravenes any provision of this Act or the regulations,

is guilty of an offence.

(2) Every director or officer of a corporation who concurs in an offence under this Act is guilty of an offence. Idem

(3) An individual who is convicted of an offence under this Act is liable to a fine of not more than \$20,000 and on a subsequent conviction to a fine of not more than \$20,000 and to imprisonment for a term of not more than one year. Idem

(4) A corporation that is convicted of an offence under this Act is liable to a fine of not more than \$40,000. Idem

(5) No proceeding under this section shall be commenced more than two years after the facts upon which the proceedings are based first came to the knowledge of the Director. Limitation

(6) A statement as to the time when the facts upon which proceedings are based first came to the knowledge of the Director purporting to be certified by the Director is, without proof of the office or signature of the Director, admissible in evidence in any proceeding, in the absence of evidence to the contrary, as evidence of the facts stated therein. Certificate as evidence

(7) If a person is convicted of an offence under this Act, the court making the conviction may, in addition to any other penalty, order the person convicted to make compensation or restitution in relation thereto. Restitution

**48.—**(1) Every person employed in the administration of this Act, including any person making an inspection under this Act and any member of the Board or a committee of the Board, shall preserve secrecy with respect to all matters that come to the person's knowledge in the course of the person's duties, employment, inquiry or inspection and shall not communicate any such information to any other person except, Matters confidential



- (a) as may be required in connection with the administration of this Act and the regulations or any proceedings under this Act or the regulations;
- (b) to the person's counsel;
- (c) with the consent of the person to whom the information relates; or
- (d) to an employee of the Ministry of Consumer and Commercial Relations or to an employee of another ministry who requires the information in the performance of his or her duties and if disclosure is necessary for the administration of this Act or any other Act and the regulations thereunder administered by the Minister.

Idem

(2) The Ministry of Consumer and Commercial Relations or another ministry may disclose information in its custody or control to an employee of the Board if,

- (a) the personal information is reasonably required to verify the truth of the contents of an application for, or an application for renewal of, a licence or to verify the truth of any other information supplied in support of any such application; or
- (b) the Ministry or agency of the Ministry has reasonable grounds to believe that the personal information is relevant to a person's qualification to hold a licence.

Testimony in  
civil suit

(3) No person to whom subsection (1) applies shall be required to give testimony in any civil suit or proceeding with regard to information obtained by the person in the course of the person's duties, employment, inquiry, investigation or inspection except in a proceeding under this Act or the regulations.

Certificate as  
evidence

**49.** A statement as to,

- (a) the licensing or non-licensing of any person;
- (b) the filing or non-filing of any document or material required or permitted to be filed with the Registrar; or
- (c) any other matter pertaining to licensing, non-licensing, filing or non-filing,

containing information from the records kept by the Registrar under this Act purporting to be certified by the Registrar under the seal of the Board is, without proof of the office or signature of the Registrar, admissible in evidence in any proceeding, in the absence of evidence to the contrary, as evidence of the facts stated therein.

**50.**—(1) A notice, order or other document under this Act or the regulations is sufficiently given, served or delivered if delivered personally or sent by first class mail addressed to the person to whom it is to be given, served or delivered at that person's last known address. Service

(2) A notice, order or other document sent by first class mail in accordance with subsection (1) shall be deemed to be given, served or delivered on the fifth day after the day of mailing, unless the person to whom it is sent establishes that the notice, order or other document was not received until a later date because of absence, accident, illness or other cause beyond that person's control. Idem

**51.**—(1) A funeral director who is registered with the Board of Funeral Services under the *Funeral Services Act* on the date this Act comes into force is deemed to be licensed as a funeral director until the expiration of the licence, unless the licence is sooner surrendered, suspended or revoked. Transition  
R.S.O. 1980,  
c. 180

(2) A person who is licensed with the Board of Funeral Services under the *Funeral Services Act* to establish and maintain a funeral services establishment on the date this Act comes into force is deemed to be licensed to operate a funeral establishment until the expiration of the licence, unless the licence is sooner surrendered, suspended or revoked. Idem

**52.** The board known as the Funeral Services Review Board is dissolved and any matter before the Board on the date this Act comes into force shall be dealt with by the Tribunal. Funeral  
Services  
Review  
Board not  
continued

**53.** The following are repealed: Repeals

1. The *Funeral Services Act*, being chapter 180 of the Revised Statutes of Ontario, 1980.
2. Section 3 of the *Mobility Rights Statute Law Amendment Act, 1985*, being chapter 5.
3. The *Prearranged Funeral Services Act*, being chapter 387 of the Revised Statutes of Ontario, 1980.

Commence-  
ment

**54.** This Act comes into force on a day to be named by proclamation of the Lieutenant Governor.

Short title

**55.** The short title of this Act is the *Funeral Directors and Establishments Act, 1989*.





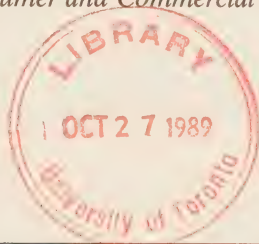


# Bill 30

(Chapter 49  
*Statutes of Ontario, 1989*)

## An Act respecting Funeral Directors and Establishments

The Hon. G. Sorbara  
*Minister of Consumer and Commercial Relations*



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<i>1st Reading</i>	June 12th, 1989
<i>2nd Reading</i>	June 21st, 1989
<i>3rd Reading</i>	October 16th, 1989
<i>Royal Assent</i>	October 16th, 1989

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**Bill 30**

**1989**

**An Act respecting  
Funeral Directors and Establishments**

HER MAJESTY, by and with the advice and consent of the Legislative Assembly of the Province of Ontario, enacts as follows:

**1.** In this Act,

Definitions

“beneficiary” means a person for whom funeral services or supplies, or both, are to be provided under a contract or prepaid contract;

“Board” means the Board of Funeral Services;

“cemetery” means a cemetery within the meaning of the *Cemeteries Act, 1989*; 1989, c. 50

“Compensation Fund” means the Prepaid Funeral Services Compensation Fund established under the regulations;

“contract” means an agreement wherein a person provides or agrees to provide funeral services or supplies, or both or for the transportation of a dead human body, and includes prepaid contracts;

“depository” means a chartered bank, loan or trust company, Province of Ontario Savings Office or a credit union as defined in the *Credit Unions and Caisses Populaires Act*; R.S.O. 1980, c. 102

“Director” means a director appointed under the *Ministry of Consumer and Commercial Relations Act*; R.S.O. 1980, c. 274

“disbursements” means payments actually made by a funeral director or a person who operates a funeral establishment on behalf of a purchaser of funeral services or supplies, or both;



“embalming” means the preservation and disinfection of all or part of a dead human body by any means other than by refrigeration;

“equity share” means a share of a class of shares that carries a voting right either under all circumstances or under some circumstances that have occurred and are continuing;

“funeral” means a rite or ceremony in connection with the death of a person where the body is present;

“funeral director” means an individual who provides or directs the providing of funeral services;

“funeral establishment” means premises where funeral services are supplied;

“funeral services” means the care and preparation of dead human bodies and the co-ordination of rites and ceremonies with respect to dead human bodies, but does not include services provided by a cemetery or crematorium owner under the *Cemeteries Act, 1989*;

1989, c. 50

“funeral supplies” means goods that are used in connection with the care and preparation of dead human bodies or the disposition of dead human bodies;

“income” means the interest or money earned, including the compounding thereof, by the investment of funds received under a prepaid contract;

“licence” means a licence issued under this Act and “licensed” has a corresponding meaning;

“Minister” means the Minister of Consumer and Commercial Relations;

“prearrangement” means an arrangement for the provision of specific funeral services, supplies or transportation of a dead human body on the death of a person who is alive at the time the arrangement is made;

“prepaid contract” means an agreement whereby a person contracts with a purchaser to provide or make provision for funeral services, funeral supplies, or both, or for the transportation of a dead human body, including disbursements, upon the death of a beneficiary, if any payment for the contract is made prior to the death of the beneficiary or the purchaser enters into an insurance contract or plan under which a licensee is to receive directly or indirectly the pro-

ceeds of the insurance policy upon the death of the beneficiary;

“prepayment” means the payment or the guarantee of a payment pursuant to a prepaid contract;

“prepayment funds” means the money deposited in trust under the provisions of this Act and the income therefrom and includes the proceeds of an insurance policy received by a licensee;

“prescribed” means prescribed by the regulations;

“Registrar” means the Registrar of the Board;

“regulations” means regulations made under this Act;

“transfer service” means a service to the public with respect to the disposition of dead human bodies, including the transportation of dead human bodies and the filling out of the necessary documentation with respect to the disposition of dead human bodies;

“Tribunal” means The Commercial Registration Appeal Tribunal.

**2.—(1)** There shall be a Registrar appointed by the Board Registrar  
for the purposes of this Act.

(2) The Registrar may exercise the powers and shall perform the duties conferred or imposed on the Registrar by or Powers of Registrar  
under this Act under the supervision of the Board.

(3) The Registrar shall maintain one or more registers in Registers  
which is entered,

- (a) the name of every person licensed under this Act;
- (b) any conditions and limitations imposed on a licence by the Registrar, a Committee or the Tribunal;
- (c) the fact and date of each revocation, suspension, cancellation or termination of a licence;
- (d) the fact and amount of each fine imposed by the Discipline Committee, except if the Discipline Committee directs that no entry with respect to a fine be made;

- (e) the fact of each reprimand made by the Discipline Committee, except if the Discipline Committee directs that no entry with respect to the reprimand be made; and
- (f) such other information in addition to that set out in clauses (a) to (e) as is prescribed.

Inspection

(4) Any person has the right, during normal business hours, to inspect the registers maintained by the Registrar.

Copies

(5) The Registrar shall provide to any person, upon payment of a reasonable charge therefor, a copy of any part of the registers maintained by the Registrar.

Board  
continued

**3.—**(1) The Board of Funeral Services, a body corporate, is continued as a corporation without share capital.

Principal  
object

(2) The principal object of the Board is to regulate the practices of funeral directors and persons who operate funeral establishments and transfer services in accordance with this Act, the regulations and the by-laws in order that the public interest may be served and protected.

Additional  
objects

(3) For the purpose of carrying out its principal object, the Board has the following additional objects:

1. To establish, maintain and develop standards of knowledge and skill among funeral directors and persons who operate funeral establishments and transfer services.
2. To establish, maintain and develop standards of qualification and standards of practice for funeral directors and persons who operate funeral establishments and transfer services.
3. To establish, maintain and develop standards of professional ethics among funeral directors and persons who operate funeral establishments and transfer services.
4. To administer the Compensation Fund.
5. To oversee and inspect trust accounts that funeral establishments and transfer services are required by law to establish or maintain.
6. To mediate complaints between consumers and licensees.

7. To establish and develop standards for funeral establishments.

8. To perform such other duties and exercise such other powers as are imposed or conferred on the Board by or under any Act.

(4) For the purpose of carrying out its objects, the Board has the capacity and the powers of a natural person.

Capacity and  
powers of  
Board

(5) The Board shall,

Duties of  
Board

(a) review the operation of this Act and the regulations and make recommendations to the Minister thereon;

(b) approve or set courses of study and examinations for the qualification of applicants for licences; and

(c) carry out such duties as are prescribed.

4.—(1) The Board shall be composed of the following members appointed by the Lieutenant Governor in Council:

Composition

1. A prescribed number of funeral directors, one of whom,

i. is not licensed to operate a funeral establishment,

ii. is not a director of a corporation that is licensed to operate a funeral establishment, and

iii. does not direct the operation of a funeral establishment.

2. A prescribed number of persons who are not funeral directors.

(2) The members of the Board shall be appointed to hold office for a term not exceeding three years and may be reappointed for further successive terms, but shall not be appointed or reappointed for more than six successive years.

Term of  
office

(3) A vacancy on the Board caused by the death, resignation, removal or incapacity to act of a member may be filled by the appointment by the Lieutenant Governor in Council of a person to hold office for the unexpired portion of the term of office of such member.

Vacancy



- Quorum (4) Five members of the Board, at least two of whom shall be members appointed under paragraph 2 of subsection (1), constitute a quorum.
- Officers (5) The Board shall appoint a chairperson and vice-chairperson and such other officers as are considered necessary from among the members of the Board.
- Expenses and remuneration of members of Board (6) The members of the Board,
- (a) appointed under paragraph 1 of subsection (1) shall be paid by the Board such expenses and remuneration as are prescribed; and
  - (b) appointed under paragraph 2 of subsection (1) shall be paid, out of the moneys appropriated therefor by the Legislature, such expenses and remuneration as are determined by the Lieutenant Governor in Council.
- Staff (7) The Board may employ such employees and retain such assistance as is necessary to perform the work of the Board and may determine their salary, remuneration and terms and conditions of employment.
- Meetings of Board (8) The Board shall meet at least four times a year.
- Continuation of Board members (9) The members of the Board who were in office immediately before the coming into force of this Act are continued in office until the expiration of their terms or until their offices otherwise become vacant.
- Annual report (10) The Board shall deliver to the Minister each year an annual report on the affairs of the Board and on the operation of the Compensation Fund.
- Idem (11) The Minister shall submit the annual report to the Lieutenant Governor in Council and shall then lay the report before the Assembly if it is in session or, if not, at the next session.
- Powers of Minister **5.** The Minister may, in addition to any other powers and duties conferred on the Minister by or under any Act,
- (a) review the activities of the Board;
  - (b) request the Board to undertake activities that, in the opinion of the Minister, are necessary and advisable to carry out the intent of this Act;

- (c) advise the Board with respect to the implementation of this Act and the regulations and with respect to the methods used or proposed to be used by the Board to implement policies and to enforce its by-laws and procedures.

**6.—**(1) The Board may pass by-laws relating to the administrative and domestic affairs of the Board not inconsistent with this Act and the regulations and, without limiting the generality of the foregoing, By-laws

1. specifying the seal of the Board;
2. providing for the execution of documents by the Board;
3. respecting banking and finance;
4. fixing the financial year of the Board and providing for the audit of the accounts and transactions of the Board;
5. respecting the calling, holding and conducting of meetings of the Board and committees of the Board and the duties of members of the Board and committees of the Board;
6. providing for a code of ethics;
7. delegating to the Executive Committee such powers and duties of the Board as are set out in the by-laws, other than the power to make, amend or revoke regulations and by-laws;
8. respecting the calling, holding and conducting of meetings of licensees;
9. providing for the use of forms;
10. providing procedures for the making, amending and revoking of the by-laws;
11. respecting management of the property of the Board;
12. providing for the appointment, composition, powers and duties of committees in addition to those committees established under subsection 7 (1);

13. respecting the application of the funds of the Board and the investment and reinvestment of any of its funds not immediately required, and for the safe-keeping of its securities;
14. respecting membership of the Board in other organizations, the payment of annual assessments and provision for representatives at meetings;
15. respecting the appointment of inspectors by the Registrar for the purposes of this Act;
16. providing for meetings of the Board and committees, except in a proceeding in respect of a licence, by means of conference telephone or other communications equipment by means of which all persons participating in the meeting can hear each other, and a member of the Board or committee participating in a meeting in accordance with such by-law shall be deemed to be present in person at the meeting;
17. providing that the Board or a committee may act upon a resolution consented to by the signatures of all members of the Board or the committee except in a proceeding in respect of a licence, and a resolution so consented to in accordance with such a by-law is as valid and effective as if passed at a meeting of the Board or the committee duly called, constituted and held for that purpose;
18. providing for the payment of necessary expenses of the Board and committees of the Board in the conduct of their business;
19. providing for the Board to enter into arrangements on behalf of licensees with respect to the bonding of licensees and requiring the payment and remittance of premiums in connection therewith, setting levies that shall be paid by licensees and exempting licensees or any class thereof from all or any part of such levy;
20. providing for the establishment of group insurance plans, other than for professional liability, in which licensees may participate on a voluntary basis;
21. regarding such other matters as are entailed in carrying on the business of the Board.

(2) A copy of the by-laws made under subsection (1) and amendments thereto, Distribution of by-laws

(a) shall be forwarded to the Minister;

(b) shall be forwarded to each licensee; and

(c) shall be available for public inspection in the office of the Board.

(3) At any time before or after receiving a copy of a by-law made under subsection (1), the Minister may, by an order in writing, revoke or amend the by-law. Minister may revoke or amend by-laws

(4) Despite subsection (3), a by-law is effective until so revoked or amended by the Minister and no act done or right acquired under any such by-law before revocation or amendment by the Minister is prejudicially affected by the revocation or amendment. Idem

**7.—**(1) The Board shall establish and appoint the following committees: Establishment of committees

1. Executive Committee.

2. Licensing Committee.

3. Complaints Committee.

4. Discipline Committee.

5. Compensation Fund Committee.

(2) The Board may establish such other committees in addition to those established under subsection (1) as the Board from time to time considers necessary. Idem

(3) If one or more vacancies occur in the membership of a committee, the members remaining constitute the committee so long as their number is not fewer than a quorum of the committee. Vacancies

**8.—**(1) The Executive Committee shall be composed of three persons who are members of the Board, one of whom shall be a person appointed under paragraph 2 of subsection 4 (1). Executive Committee

(2) The Board shall name one member of the Executive Committee to be chairperson. Chairperson



- Quorum (3) Two members of the Executive Committee constitute a quorum.
- Powers of Executive Committee (4) The Board may delegate to the Executive Committee the authority to exercise any power or perform any duty of the Board, other than to make, amend or revoke a by-law.
- Urgent matters (5) Subject to ratification by the Board at its next ensuing meeting, the Executive Committee may take action upon any other matter that requires immediate attention between meetings of the Board, other than to make, amend or revoke a by-law.
- Licensing Committee **9.**—(1) The Licensing Committee shall be composed of three persons who are members of the Board, one of whom shall be a person appointed under paragraph 2 of subsection 4 (1).
- Chairperson (2) The Board shall name one member of the Licensing Committee to be chairperson.
- Quorum (3) Two members of the Licensing Committee constitute a quorum.
- Complaints Committee **10.**—(1) The Complaints Committee shall be composed of three persons who are members of the Board, one of whom shall be a person appointed under paragraph 2 of subsection 4 (1).
- Chairperson (2) The Board shall name one member of the Complaints Committee to be chairperson.
- Quorum (3) Two members of the Complaints Committee constitute a quorum.
- Discipline Committee **11.**—(1) The Discipline Committee shall be composed of four members of the Board, two of whom shall be persons appointed under paragraph 2 of subsection 4 (1).
- Chairperson (2) The Board shall name one member of the Discipline Committee to be chairperson.
- Quorum (3) Three members of the Discipline Committee constitute a quorum.
- Majority vote (4) All disciplinary decisions of the Discipline Committee require the vote of a majority of the members of the Discipline Committee present at the hearing.

(5) If the Discipline Committee commences a hearing and a member of the Discipline Committee is unable to continue to act, the remaining members may complete the hearing despite the absence of the member.

Disability of member

**12.**—(1) The Compensation Fund Committee shall be composed of three persons who are members of the Board, two of whom shall be persons appointed under paragraph 2 of subsection 4 (1).

Compensation Fund Committee

(2) The Board shall name one member of the Compensation Fund Committee to be chairperson.

Chairperson

(3) Two members of the Compensation Fund Committee constitute a quorum.

Quorum

**13.**—(1) The Licensing Committee shall consider all matters that are referred to it by the Registrar under section 22.

Powers and duties of Licensing Committee

(2) The Licensing Committee may make recommendations to the Registrar with respect to,

Recommendations

- (a) the eligibility of an applicant for a licence or a renewal of a licence;
- (b) issuing or refusing to issue a licence to an applicant for a licence or a renewal of a licence;
- (c) issuing a licence or a renewal of a licence to an applicant subject to conditions;
- (d) suspending or revoking the licence of a licensee;
- (e) the desirability of requiring an applicant for a licence or a renewal of a licence or a licensee to take and pass such additional training or part thereof that may be prescribed; or
- (f) exempting an applicant for a license or a renewal of a licence or a licensee from any licensing requirement.

**14.**—(1) The Complaints Committee shall consider and investigate complaints regarding the conduct or actions of any licensee, but no action shall be taken by the Complaints Committee under subsection (2) unless,

Duties of Complaints Committee

- (a) a written complaint has been filed with the Registrar and the licensee whose conduct or actions are being investigated has been notified of the com-

plaint and given at least two weeks in which to submit in writing to the Committee any explanations or representations the licensee may wish to make concerning the matter; and

- (b) the Committee has examined or has made every reasonable effort to examine all records and other documents relating to the complaint.

Idem

(2) The Complaints Committee in accordance with the information it receives may,

- (a) consider all or part of the matter;
- (b) direct that all or part of the matter be referred to the Discipline Committee; and
- (c) subject to subsection (9), take or recommend such action that it considers appropriate in the circumstances and that is not inconsistent with this Act, the regulations or the by-laws.

Decisions  
and reasons

(3) The Complaints Committee shall advise the Registrar in writing of the action it proposes to take or recommend and its reasons therefor.

Notice

(4) Subsections (3) and (6) do not apply to a matter that is referred to the Discipline Committee.

Hearing

(5) The Complaints Committee is not required to hold a hearing or to afford any person an opportunity for a hearing or to make oral submissions before it prior to it taking action or making a recommendation under this section.

Notice

(6) The Registrar shall send to the complainant and to the person complained against by prepaid first class mail a copy of the proposal of the Complaints Committee and its reasons therefor, if any, together with notice that informs the person to whom it is sent that the person is entitled to a hearing by the Tribunal if the person mails or delivers to the Registrar and to the Tribunal, within fifteen days after the notice is served on the person, notice in writing requiring a hearing and the person may so require such a hearing.

No hearing

(7) If a complainant or the person complained against does not require a hearing by the Tribunal, the Complaints Committee may carry out the proposal stated in the notice to the complainant or the person complained against.

(8) If the complainant or the person complained against requires a hearing, the Tribunal shall appoint a time for and hold a hearing. Hearing

(9) After holding a hearing, the Tribunal may by order direct the Complaints Committee to carry out the proposal or refrain from carrying out the proposal and to take such action as the Tribunal considers the Complaints Committee ought to take in accordance with this Act and the regulations and, for such purposes, the Tribunal may substitute its opinion for that of the Complaints Committee. Order

(10) The Tribunal may attach such conditions to its order as it considers proper to give effect to the purposes of this Act. Conditions

(11) The Registrar, the person who required the hearing and such other persons as the Tribunal may specify are parties to proceedings before the Tribunal under this section. Parties

**15.** Despite subsection 14 (1), the Board or the Executive Committee may direct the Discipline Committee to hold a hearing and determine any allegation of professional misconduct or incompetence on the part of a funeral director. Reference by  
Board or  
Executive  
Committee

**16.—(1)** The Discipline Committee shall, Duties of  
Discipline  
Committee

- (a) when so directed by the Board, Executive Committee or Complaints Committee, hear and determine allegations of professional misconduct or incompetence against a funeral director;
- (b) hear and determine matters referred to it by the Board, Registrar, Executive Committee or Complaints Committee under this Act with respect to funeral directors; and
- (c) perform such other duties as are assigned to it by the Board.

(2) A funeral director may be found guilty of professional misconduct by the Discipline Committee if, Professional  
misconduct

- (a) the funeral director has been found guilty of an offence that is relevant to the funeral director's suitability to practise as a funeral director, upon proof of such conviction; or
- (b) the funeral director has been guilty in the opinion of the Discipline Committee of professional misconduct as prescribed.



## Incompetence

(3) The Discipline Committee may find a funeral director to be incompetent if in its opinion,

- (a) the funeral director has displayed in the providing or in directing the providing of funeral services or funeral supplies or in performing or supervising the performing of an embalming, a lack of knowledge, skill or judgment of a nature or to an extent that demonstrates the funeral director is unfit to continue as a funeral director;
- (b) the funeral director is suffering from a physical or mental condition or disorder of a nature and extent that makes it desirable in the interest of the public that the funeral director no longer be permitted to continue as a funeral director.

## Examinations

(4) If the Discipline Committee is required to hear and determine allegations of incompetence under clause (3) (b), the Discipline Committee may require the funeral director who is the subject of the hearing to submit to a physical or mental examination, or both, by such persons as the Board designates.

## Suspension of licence

(5) If a funeral director fails to submit to an examination required under this section, the Discipline Committee may order that the licence of the funeral director be suspended until the funeral director submits to the examination.

## Evidence

(6) A legally qualified medical practitioner who conducts a physical or mental examination required under this section is not compellable to produce at the hearing his or her case histories, notes or any other records that may constitute medical evidence.

## Report

(7) A person who conducts an examination under this section shall upon completing the examination forthwith prepare and deliver to the Registrar a report that contains facts, findings and conclusions and suggested treatment, if any.

## Idem

(8) A report that is prepared as a result of an examination that is conducted under this section shall be delivered by the Registrar to the funeral director,

- (a) if the examination is required prior to the hearing, at least five days prior to the commencement of the hearing; or

- (b) if the examination is required during the course of the hearing, at least five days prior to its introduction as evidence.

(9) A report that is prepared as a result of an examination that is conducted under this section is receivable as evidence without proof of its making or the signature of the person making the report. Idem

(10) A party to the hearing who is not tendering a report as evidence has the right to summon and cross examine the person who made the report on the contents of the report. Right to cross examine

(11) If the Discipline Committee finds a funeral director guilty of professional misconduct or incompetence, it may by order do any of the following things or any combination of the following things: Powers of Discipline Committee

1. Revoke the licence of the funeral director.
2. Suspend the licence of the funeral director for a stated period.
3. Impose restrictions on the licence of the funeral director for a period and subject to the conditions specified by the Discipline Committee.
4. Reprimand the funeral director.
5. Impose such fine as the Discipline Committee considers appropriate to a maximum of \$10,000 to be paid by the funeral director to the Treasurer of Ontario for payment into the Consolidated Revenue Fund.
6. Direct that the imposition of a penalty be suspended or postponed for the period and upon the terms specified by the Discipline Committee.

(12) If the Discipline Committee imposes a fine or reprimands a funeral director, the Discipline Committee may direct that the fine or the reprimand not be entered in the applicable register. Entry on register

(13) If the Discipline Committee is of the opinion that the commencement of the proceedings was unwarranted, the Committee may order that the Board reimburse the funeral director for the funeral director's costs or such portion thereof as the Discipline Committee fixes. Costs

Stay on  
appeal for  
incompetence

(14) If the Discipline Committee revokes, suspends or restricts a licence on the grounds of incompetence, the decision takes effect immediately despite the fact that an appeal is taken from the decision, unless the Tribunal otherwise orders and, where the Tribunal is satisfied that it is appropriate in the circumstances, the Tribunal may so order.

Stay on  
appeal for  
professional  
misconduct

(15) If the Discipline Committee revokes, suspends or restricts a licence on grounds other than for incompetence, the order does not take effect until the time for appeal from the order has expired without an appeal being taken or, if taken, the appeal has been disposed of or abandoned, unless the Discipline Committee otherwise orders, and, where the Committee considers that it is appropriate for the protection of the public, the Committee may so order.

Service of  
decision of  
Discipline  
Committee

(16) If the Discipline Committee finds a funeral director guilty of professional misconduct or incompetence, a copy of the decision shall be served upon the person complaining in respect of the conduct or action of the funeral director.

Continuation  
on expiry of  
Committee  
membership

(17) If a proceeding is commenced before the Discipline Committee and the term of office on the Board or on the Committee of a member sitting for the hearing expires or is terminated before the proceeding is disposed of but after evidence has been heard, the member shall be deemed to remain a member of the Discipline Committee for the purpose of completing the disposition of the proceeding in the same manner as if his or her term of office had not expired or been terminated.

Parties to  
discipline  
proceedings

**17.—(1)** In proceedings before the Discipline Committee, the Board and the funeral director whose conduct is being investigated in the proceedings are parties to the proceedings.

Examination  
of  
documentary  
evidence

(2) A funeral director whose conduct is being investigated in proceedings before the Discipline Committee shall be afforded an opportunity to examine before the hearing any written or documentary evidence that will be produced or any report the contents of which will be given in evidence at the hearing.

Members  
holding  
hearing not  
to have  
taken part in  
investigation,  
etc.

(3) Members of the Discipline Committee holding a hearing shall not have taken part before the hearing in any investigation of the subject-matter of the hearing other than as a member of the Board considering the referral of the matter to the Discipline Committee or at a previous hearing of the Committee.

(4) Members of the Discipline Committee shall not communicate directly or indirectly in relation to the subject-matter of the hearing with any person or with any party or representative of a party except upon notice to and opportunity for all parties to participate.

No  
communi-  
cation

(5) The Discipline Committee may seek legal advice from an adviser independent from the parties and, in such case, the nature of the advice shall be made known to the parties in order that they may make submissions as to the law.

Advice

(6) The oral evidence taken before the Discipline Committee shall be recorded and, if so required, copies or a transcript thereof shall be furnished only to the parties at the cost to the parties.

Recording of  
evidence

(7) Documents and things put in evidence at a hearing of the Discipline Committee shall, upon the request of the person who produced them, be released to the person by the Committee within a reasonable time after the matter in issue has been finally determined.

Release of  
documentary  
evidence

**18.**—(1) A party to proceedings before the Discipline Committee may appeal from its decision or order to the Tribunal.

Appeal to  
Tribunal

(2) Subsections 14 (6) to (11) apply with necessary modifications to an appeal to the Tribunal from a decision or order of the Discipline Committee.

Application

**19.**—(1) No person shall act or imply that the person is available to act as a funeral director unless the person is licensed to do so.

Licence  
required

(2) No person shall operate or imply that the person is available to operate a funeral establishment unless the person is licensed to do so.

Idem

(3) No person shall operate or imply that the person is available to operate a transfer service unless,

Idem

(a) the person is licensed to do so; or

(b) the person is licensed to operate a funeral establishment and the transfer service is operated as part of the normal operation of the funeral establishment.

(4) No person other than a funeral director who is licensed to do so shall perform or imply that the person is available to perform embalming.

Idem



Place of  
business

(5) No person shall operate a funeral establishment or transfer service except at a place that is named in the licence of the person.

Funeral  
services

(6) No funeral director shall offer funeral services except through a licensed funeral establishment.

Idem

(7) No funeral director shall offer funeral services to the public except through an operator of a funeral establishment who is licensed to do so.

Funeral  
establishment

(8) No operator of a funeral establishment shall employ a person as a funeral director unless the person is licensed as a funeral director.

Direction and  
management

(9) Every operator of a funeral establishment shall ensure that the funeral establishment is managed and directly supervised by a funeral director who is responsible for the conduct or misconduct of any person to whom the funeral director delegates responsibilities.

Idem

(10) No funeral director shall manage and directly supervise the operation of more than one funeral establishment except as prescribed.

Corporation

(11) Each corporation that is licensed to operate a funeral establishment shall ensure that at least one of the directors of the corporation is a funeral director.

Exceptions

(12) Subsections (1) and (4) do not apply,

(a) to a student in a training program who is working under the supervision and in the presence of a funeral director; or

(b) to a student who is enrolled in a recognized course of funeral services education and who is working under the supervision and in the presence of the instructor of the course.

Idem

(13) Subsection (4) does not apply to a person employed in a recognized school of medicine or anatomy while so employed.

Application

**20.**—(1) A person may apply to the Registrar for a licence to operate a funeral establishment or to operate a transfer service.

(2) A person who has successfully completed the educational requirements that are prescribed may apply to the Registrar for a licence as a funeral director. Idem

(3) An applicant is entitled to a licence or a renewal of a licence as a funeral director or to operate a funeral establishment or to operate a transfer service except if, Requirement

- (a) the applicant cannot reasonably be expected to be competent or financially responsible in the conduct of the applicant's business;
- (b) the past or present conduct of the persons referred to in subsection (4) affords reasonable grounds for belief that the applicant will not operate in accordance with the law and with integrity and honesty;
- (c) the applicant or an employee or agent of the applicant makes a false statement or provides a false statement in an application for a licence;
- (d) the applicant is carrying on activities that are, or will be if the applicant is licensed, in contravention of this Act or the regulations;
- (e) the applicant will, if licensed, be carrying on activities under this Act and the regulations that are in contravention of another Act or a municipal by-law; or
- (f) in the case of a corporation that operates a funeral establishment, no director of the corporation is a funeral director.

(4) Clause (3) (b) applies to the following persons: Idem

- 1. The applicant.
- 2. An officer or director of the applicant.
- 3. A person holding more than 10 per cent of the equity shares of the applicant or an officer or director of such person.
- 4. Any person having a beneficial interest in the operation of the business of the applicant or licensee.

(5) The Registrar shall issue a licence as a funeral director, to operate a funeral establishment or to operate a transfer service, as the case requires, to every applicant therefor who Issue

pays the fee that is prescribed, complies with this Act and the regulations and is not disentitled under subsection (3).

Conditions

(6) A licence is subject to such conditions as may be consented to by the applicant, imposed by the Tribunal or prescribed.

Refusal to issue

**21.**—(1) Subject to section 22, the Registrar may refuse to issue a licence to an applicant if the applicant is not entitled to a licence under subsection 20 (3).

Refusal to renew

(2) Subject to section 22, the Registrar may refuse to renew or may suspend or revoke a licence,

- (a) for any reason that would disentitle the licensee to a licence under subsection 20 (3) if the licensee were an applicant;
- (b) if the licensee is in breach of a condition of the licence; or
- (c) if the licensee is a corporation and the shareholders of the corporation have changed in the manner and to the extent prescribed.

Fees

(3) Subject to section 22, the Registrar shall refuse to issue or renew a licence if the applicant has not paid the fee that is prescribed.

Proposal

**22.**—(1) If the Registrar proposes to refuse to issue or renew a licence, proposes to issue a licence subject to conditions or proposes to suspend or revoke a licence, the Registrar shall serve notice of the proposal, together with written reasons therefor, on the applicant or the licensee.

Notice

(2) A notice under subsection (1) shall inform the applicant or licensee that the applicant or licensee is entitled to a hearing by the Tribunal if the applicant or licensee mails or delivers to the Registrar and to the Tribunal, within fifteen days after the notice is served on the applicant or licensee, notice in writing requiring a hearing and the applicant or licensee may so require such a hearing.

No hearing

(3) If an applicant or licensee does not require a hearing by the Tribunal, the Registrar may carry out the proposal stated in the notice to the applicant or licensee.

Hearing

(4) If an applicant or licensee requires a hearing, the Tribunal shall appoint a time for and hold a hearing.

(5) After holding a hearing, the Tribunal may by order direct the Registrar to carry out the proposal or refrain from carrying out the proposal and to take such action as the Tribunal considers the Registrar ought to take in accordance with this Act and the regulations and for such purposes the Tribunal may substitute its opinion for that of the Registrar.

Order

(6) The Tribunal may attach such conditions to its order or to the licence as it considers proper to give effect to the purposes of this Act.

Conditions

(7) The Registrar, the applicant or licensee who has required the hearing and such other persons as the Tribunal may specify are parties to proceedings before the Tribunal under this section.

Parties

(8) The Registrar may cancel a licence upon the request in writing of the licensee and the surrender of the licence by the licensee.

Cancellation

(9) The Registrar may refer any matter that deals with licensing to the Licensing Committee for their recommendations.

Referral

**23.—**(1) A person who is refused a licence or who is refused a renewal of a licence may apply in writing to the Registrar for the issuance of a licence only if at least one year has passed since the refusal.

Application

(2) A person whose licence is revoked under this Act or whose registration was cancelled under a predecessor of this Act may apply in writing to the Registrar for the issuance of a licence only if at least one year has passed since the revocation or cancellation.

Idem

(3) A person whose licence is suspended under this Act or whose registration was suspended under a predecessor of this Act, for more than one year, may apply in writing to the Registrar for the removal of the suspension only if at least one year has passed since the suspension.

Idem

**24.—**(1) If the Registrar proposes to suspend or revoke a licence, the Registrar may, if the Registrar considers it to be necessary in the public interest, by order, temporarily suspend the licence and the order shall take effect immediately.

Temporary order

(2) If a hearing is required with respect to a proposal to suspend or revoke a licence, the order expires fifteen days after the date of the notice requiring the hearing unless the hearing is commenced, in which case the Tribunal holding the

Hearing



hearing may extend the time of expiration until the hearing is concluded.

No licence

(3) If the Registrar by order temporarily suspends a licence under this section or section 22, the licensee shall during the term of the suspension be considered not to be licensed under this Act.

Stay

R.S.O. 1980,  
c. 274

**25.** Despite the fact that a licensee appeals from an order of the Tribunal under section 11 of the *Ministry of Consumer and Commercial Relations Act*, the order takes effect immediately but the Tribunal may grant a stay until the disposition of the appeal.

Continuation

**26.** If in the time prescribed therefor or, if no time is prescribed before the expiry of the licensee's licence, a licensee applies in the manner prescribed for renewal of the licence and pays the fee prescribed, the licence shall be deemed to continue,

(a) until the renewal is granted; or

(b) if the licensee is served with a notice that the Registrar proposes to refuse to grant the renewal, until the time for giving notice requiring a hearing has expired and, if a hearing is required, until the Tribunal has made its order.

Advertising

**27.—**(1) If the Director or the Registrar believes, on reasonable and probable grounds, that a person licensed under this Act has made a false or misleading public representation or that a representation is in contravention of this Act or the regulations, the Director or the Registrar shall order the person to stop making the representation and in the order shall set out the reasons for the order.

Compliance  
with order

(2) A person who receives an order under subsection (1) shall immediately comply with the order and shall refrain from making the representation, in any form, in the future.

Appeal

(3) Any person who receives an order under subsection (1) may appeal the order to the Tribunal.

Stay of order

(4) The Tribunal may issue a stay of any order made by the Director or Registrar under subsection (1).

Repayment

**28.** If a person is entitled to the repayment of money paid for or on account of funeral services, the operator of the funeral establishment, the funeral director who managed or manages the operation of the funeral establishment and any

funeral director in the employ of the operator of the funeral establishment who received the money or any part thereof are liable jointly and severally with any other person who is liable for the repayment of the money.

**29.** A licence is not required with respect to rites and ceremonies traditionally provided at a place of worship. Place of worship

**30.**—(1) No person other than a person who is licensed to operate a funeral establishment or a transfer service and who is a participant in good standing in the Compensation Fund shall enter into or offer to enter into a prepaid contract with a purchaser. Prepaid contracts

(2) Subsection (1) does not apply to a person selling funeral supplies under the authority of the *Cemeteries Act, 1989*. Idem  
1989, c. 50

**31.**—(1) No licensee shall enter into a prepaid contract that contains a provision for the payment of interment rights in a cemetery lot. Contracts

(2) All goods or services for which a licensee accepts payment in respect of one beneficiary shall be included in one prepaid contract. One contract

(3) No licensee shall enter into a prepaid contract that guarantees the price of any goods or services in the contract unless the price of all goods and services included in the contract are guaranteed. Guarantee

**32.**—(1) Prior to the death of the beneficiary, the purchaser or a person designated in the contract by the purchaser may cancel the contract at any time. Cancellation

(2) Prior to the death of the beneficiary but after the death of the purchaser, the beneficiary or the beneficiary's personal representative may cancel the contract at any time. Idem

(3) After the death of the beneficiary, only the beneficiary's personal representative may at any time cancel the contract prior to the delivery of all the services contracted for. Idem

(4) Subsections (1), (2) and (3) apply to contracts entered into before this Act comes into force. Idem

**33.** No person shall charge or accept any payment with respect to a prearrangement. Prearrangement fees

**34.**—(1) Every person who receives a payment under a prepaid contract shall hold the amount of the payment Trust

together with all income accrued thereon in trust until it is disbursed in accordance with this Act and the regulations.

## Cancellation

(2) If a prepaid contract is cancelled, the person holding the funds in trust under the contract shall forthwith pay the funds and all income accrued thereon to,

- (a) if the prepaid contract is cancelled prior to the death of the beneficiary, the purchaser or the person set out in the contract;
- (b) if the prepaid contract is cancelled prior to the death of the beneficiary but after the death of the purchaser, the beneficiary; or
- (c) if the prepaid contract is cancelled after the death of the beneficiary, the estate of the beneficiary.

## Deductions

(3) If a prepaid contract is cancelled after thirty days of the entering into of the contract, the person paying under subsection (2) may deduct from the amount paid such fees as are prescribed.

## Application

(4) Subsection (1) does not apply to a payment made to an insurer under an insurance contract or plan.

## Repayment

**35.**—(1) If a prepaid contract is fulfilled, the balance, if any, of the prepayment funds that are in excess of the cost of delivering the services and supplies contracted for shall be paid to the beneficiary's estate forthwith despite any contrary provision in the contract.

## Costs

(2) The cost of delivering the services and supplies required under a prepaid contract shall not exceed the amount that would otherwise be charged for the same services and supplies if there had not been prepayment.

## Contract requirements

**36.**—(1) A prepaid contract is not enforceable by an operator of a funeral establishment or transfer service unless,

- (a) it is written, signed by both parties and complies with the regulations;
- (b) it sets out the purchaser's cancellation rights under this Act; and
- (c) the operator delivers a signed copy of the contract to the purchaser at the time the contract is made.

(2) An operator of a funeral establishment or transfer service who receives money under a contract that is not enforceable because of the application of this section shall refund to the purchaser, immediately upon written demand, with interest at the prescribed rate, all money received.

Refund with interest

(3) Subsection (2) does not apply after the supplies and services have been provided under the contract.

Exception

**37.** Every licensee shall make such information as is prescribed available to the public in the manner and form prescribed.

Public information

**38.—**(1) No person shall contact, in any way, a person in a hospital, nursing home or such other institution as is prescribed for the purpose of suggesting that a contract be made.

Soliciting prohibited

(2) No person shall contact, by telephone or in person, a person for the purpose of suggesting that a contract be made.

Idem

(3) This section does not prohibit,

Exception

(a) a contact made at the request of the person being contacted; or

(b) a contact with a licensee.

**39.—**(1) No person shall operate a funeral establishment or transfer service in conjunction with the owner of a cemetery or crematorium in a manner that is prescribed.

Prohibition

(2) No person shall operate a funeral establishment or transfer service from locations that are prescribed.

Idem

**40.—**(1) If the Director or the Board is of the opinion that a person is not complying with this Act or the regulations, despite the imposition of a penalty in respect of the non-compliance and despite the fact that another remedy may be available, the Director or the Board may apply to a judge of the High Court for an order directing the person to comply.

Restraining order

(2) Upon an application under subsection (1), the judge may make the order applied for or such other order as the judge thinks appropriate.

Idem

(3) An appeal lies to the Divisional Court from an order made under subsection (2).

Idem

**41.—**(1) If the Director has reasonable and probable grounds to believe that a licensee is doing or is about to do

Freezing assets



something that will jeopardize the public interest, the Director may direct any person holding, having on deposit or controlling assets of the licensee or trust funds under the control of the licensee to hold the assets or trust funds until further instructions are received from the Director to release a particular asset or trust fund from the direction.

Scope of direction

(2) In the case of a bank or a corporation, a direction under subsection (1) applies only to the offices, branches or agencies thereof named in the direction.

Application for directions

(3) Any person named in a direction issued under subsection (1), if in doubt as to the application of the direction to particular assets or trust funds, may apply to the Director for an order of clarification.

Revocation or amendment of direction

(4) On an application of a licensee or any other person having an interest therein, the Director may make an order on such conditions as are set out in the order revoking the direction or consenting to the release of a particular asset or trust fund from the direction.

Appeal

(5) A person affected by a direction or order of the Director made under this section or a refusal to make an order may appeal to the Tribunal.

Application

(6) Subsections 14 (6) to (11) apply with necessary modifications to an appeal to the Tribunal from a direction or order of the Director.

Inspectors

**42.—**(1) The Registrar or a Director may appoint inspectors for the purpose of determining whether there is compliance with this Act and the regulations.

Certificate of appointment

(2) An inspector exercising a power under this Act shall, on request, produce his or her certificate of appointment.

Inspections

**43.—**(1) For the purpose of ensuring compliance with this Act and the regulations, an inspector may,

- (a) enter any place at any reasonable time;
- (b) request the production for inspection of documents or things that may be relevant to the inspection;
- (c) inspect and, upon giving a receipt therefor, remove, for the purpose of making copies or extracts, documents or things relevant to the inspection;

- (d) inquire into negotiations, transactions, loans or borrowings of a licensee and into assets owned, held in trust, acquired or disposed of by a licensee that are relevant to an inspection;
- (e) conduct such tests as are reasonably necessary; and
- (f) remove materials or substances for examination or test purposes subject to the licensee or other occupant of the premises being notified thereof.

(2) Subsection (1) does not apply to confer a power of entry to a room actually used as a dwelling without the consent of the occupier. Entry to dwellings

(3) A justice of the peace may issue a warrant authorizing the person named in the warrant, Warrant

- (a) to do anything set out in clause (1) (a), (c), (e) or (f);
- (b) to search for and seize any document or thing relevant to the inspection; or
- (c) to enter and search a room actually used as a dwelling.

(4) A warrant may be issued under subsection (3) if the justice of the peace is satisfied on information under oath that, in the case of a warrant to be issued under, Requirements for warrant to issue

- (a) clause (3) (a), an inspector has been prevented from doing anything permitted under clause (1) (a), (c), (e) or (f) or there is reasonable ground to believe that an inspector may be prevented from doing any of those things;
- (b) clause (3) (b), to search for and seize a document or thing that there is reasonable ground to believe will afford evidence relevant to a contravention of this Act or the regulations; or
- (c) clause (3) (c), it is necessary that a room actually used as a dwelling be entered for the purposes of carrying out an inspection or there is, in such a room, a document or thing that there is reasonable ground to believe is relevant to an inspection under this Act.

- Execution of warrant (5) A warrant issued under this section shall specify the hours and days during which it may be executed.
- Expiry (6) Unless renewed, a warrant under this section expires not later than thirty days after the date on which it is made.
- Notice not required (7) A warrant under this section may be issued or renewed before or after expiry upon application without notice.
- Experts (8) An inspector is entitled to call upon such experts as are necessary to assist the inspector in carrying out an inspection under this Act.
- Assistance (9) A person doing anything under the authority of a warrant issued under this section is authorized to call on such police officers to assist and to use such force as is necessary in the execution of the warrant.
- Copies (10) An inspector taking material in order to copy it shall make the copy with reasonable dispatch and shall promptly return the material taken.
- Admissibility of copies (11) Copies of, or extracts from, documents and things removed under this section and certified as being true copies of, or extracts from, the originals by the person who made them are admissible in evidence to the same extent as, and have the same evidentiary value as, the documents or things of which they are copies or extracts.
- Obstruction of inspector **44.**—(1) No person shall obstruct an inspector in carrying out an inspection under this Act or withhold, destroy, conceal or refuse to provide any relevant information or thing required for the purpose of the inspection.
- Facilitating inspection (2) It is a condition of each licence issued under this Act that the licensee facilitate an inspection relevant to the licence.
- Appointment of receiver and manager **45.**—(1) The Director or Registrar may apply to a judge or a local judge of the Supreme Court for the appointment of a receiver and manager of an involved funeral establishment or transfer service if,

(a) the Director or Registrar has reasonable and probable grounds to believe that a person licensed under this Act has failed or is about to fail to provide contracted and paid for funeral services to a client;

(b) the Director or Registrar is advised that a proposal to suspend or revoke a licence under section 21 or

to temporarily suspend a licence under section 24 has been made; or

- (c) the Director has directed or is about to make a direction under section 41.

(2) A judge, upon an application being made under subsection (1), without notice or, if the judge considers that notice should be given, upon such notice as the judge stipulates, may, if it is considered in the public interest and subject to the *Bankruptcy Act* (Canada), appoint a receiver and manager to take possession and control of the business of the person in respect of whom an action referred to in subsection (1) applies for a period not exceeding sixty days.

Idem

R.S.C. 1985,  
c. B-3

(3) An appointment made under subsection (2) may be extended, upon an application without notice, for an additional period not exceeding sixty days.

Extension

(4) A receiver and manager appointed under subsection (2) shall take possession and control of the assets of the business and shall thereafter conduct the business and take such steps as in the opinion of the receiver and manager should be taken toward its rehabilitation.

Receiver and  
manager  
taking  
control

(5) For the purposes of subsection (4), the receiver and manager have all the powers of the board of directors of the corporation, if the business is a corporation, or of a sole proprietor or all partners if the business is not a corporation and, without limiting the generality of the foregoing, the receiver and manager may,

Idem

- (a) exclude the directors, officers, servants and agents of the business from the premises and property of the business; and
- (b) carry on, manage and conduct the operations of the business and in the name of the business preserve, maintain, realize, dispose of and add to the property of the business and receive the incomes and revenues of the business.

(6) An order made under this section may be enforced in the same manner as any order or judgment of the Supreme Court and may be varied or discharged upon an application made by notice.

Enforcement  
of order

(7) Upon an application being made under this section, the rules of practice of the Supreme Court apply.

Rules of  
practice



## Regulations

**46.—**(1) The Lieutenant Governor in Council may make regulations,

1. prescribing the manner in which trust accounts shall be kept and accounted for;
2. providing for the inspection of trust accounts;
3. prescribing the duties of depositories with respect to trust funds held under this Act;
4. requiring receipts to be given by licensees with respect to contracts;
5. providing for the establishment, maintenance and administration of the Compensation Fund;
6. prescribing provisions that relate to the investing and paying out of moneys from the Compensation Fund;
7. providing for the payment of levies into the Compensation Fund and prescribing the amounts of levies;
8. providing for appeals from a refusal to pay out of the Compensation Fund;
9. governing the powers and duties of the trustee administering the Compensation Fund;
10. requiring the purchase of bonds for the purpose of indemnifying the Compensation Fund;
11. prescribing the terms and amounts of bonds;
12. providing for payment out of the Compensation Fund of claims and procedures to be followed with respect thereto;
13. requiring participation in the Compensation Fund by licensees;
14. on any matter relating generally to the purchase, renewal or terms of a bond or the disposition of payments received thereunder;
15. governing the form and content of contracts and receipts, including the cancellation of contracts;

16. prescribing the terms that a contract shall be deemed to contain;
17. prescribing conditions under which contracts may be assigned and prohibiting assignments that are not in accordance with the prescribed conditions;
18. regulating, limiting or prohibiting the soliciting of contracts;
19. governing the term during which each class or type of licence is valid;
20. exempting any person or thing or class of person or thing from the application of any provision of this Act or the regulations and prescribing conditions for any exemption;
21. authorizing persons, other than funeral directors, to perform specified acts in the providing of funeral services under the supervision or direction of a funeral director;
22. governing the books, accounts, records and information that shall be kept by licensees and that shall be filed with the Registrar;
23. prescribing fees and requiring the payment of fees;
24. prescribing forms and providing for their use;
25. prescribing educational requirements and testing requirements on an initial and ongoing basis for licensees and employees of licensees;
26. governing applications for licences and renewals of licences;
27. prescribing classes of licences;
28. governing the requirements and qualifications for the issuing of licences and prescribing the conditions for obtaining and maintaining a licence;
29. governing standards of practice and operation for licensees;
30. respecting the methods and materials that may be used in providing funeral services;

31. prohibiting or governing the advertising of funeral services or funeral supplies and prohibiting or governing the display of funeral supplies to the public;
32. governing the construction, location, equipment, maintenance, repairs, additions and alterations to funeral establishments and governing the information, plans and materials to be furnished to the Registrar with respect thereto;
33. governing the equipment and practices, including hygienic practices, with respect to the embalming, transportation, preparation and disposal of dead human bodies;
34. regulating, controlling and prohibiting the use of terms, titles or designations by licensees;
35. prescribing practices or actions that are evidence of incompetence or lack of honesty and integrity;
36. governing the availability and display of funeral services and funeral supplies;
37. prescribing specifications and minimum requirements for funeral services and funeral supplies;
38. prescribing, for any notice required to be given under this Act, the type of notice and the manner in which it is to be given;
39. governing the payment of money into and out of trust funds, including the time within which and the circumstances under which payments are to be made;
40. providing for the maintenance and inspection of registers of persons who are licensed;
41. prescribing anything that is referred to in this Act as being prescribed.

Limited  
application

(2) A regulation made under this Act may be of limited application.

Retroactive

(3) A regulation made under this section may be retroactive in effect and may apply to contracts entered into before this Act comes into force.

Offence

**47.—**(1) Every person who,

- (a) furnishes false, misleading or incomplete information in an application under this Act or in a statement or return required to be furnished under this Act or the regulations;
- (b) fails to comply with a direction or order made under this Act; or
- (c) contravenes any provision of this Act or the regulations,

is guilty of an offence.

(2) Every director or officer of a corporation who concurs in an offence under this Act is guilty of an offence. Idem

(3) An individual who is convicted of an offence under this Act is liable to a fine of not more than \$20,000 and on a subsequent conviction to a fine of not more than \$20,000 and to imprisonment for a term of not more than one year. Idem

(4) A corporation that is convicted of an offence under this Act is liable to a fine of not more than \$40,000. Idem

(5) No proceeding under this section shall be commenced more than two years after the facts upon which the proceedings are based first came to the knowledge of the Director. Limitation

(6) A statement as to the time when the facts upon which proceedings are based first came to the knowledge of the Director purporting to be certified by the Director is, without proof of the office or signature of the Director, admissible in evidence in any proceeding, in the absence of evidence to the contrary, as evidence of the facts stated therein. Certificate as evidence

(7) If a person is convicted of an offence under this Act, the court making the conviction may, in addition to any other penalty, order the person convicted to make compensation or restitution in relation thereto. Restitution

**48.—**(1) Every person employed in the administration of this Act, including any person making an inspection under this Act and any member of the Board or a committee of the Board, shall preserve secrecy with respect to all matters that come to the person's knowledge in the course of the person's duties, employment, inquiry or inspection and shall not communicate any such information to any other person except, Matters confidential



- (a) as may be required in connection with the administration of this Act and the regulations or any proceedings under this Act or the regulations;
- (b) to the person's counsel;
- (c) with the consent of the person to whom the information relates; or
- (d) to an employee of the Ministry of Consumer and Commercial Relations or to an employee of another ministry who requires the information in the performance of his or her duties and if disclosure is necessary for the administration of this Act or any other Act and the regulations thereunder administered by the Minister.

Idem

(2) The Ministry of Consumer and Commercial Relations or another ministry may disclose information in its custody or control to an employee of the Board if,

- (a) the personal information is reasonably required to verify the truth of the contents of an application for, or an application for renewal of, a licence or to verify the truth of any other information supplied in support of any such application; or
- (b) the Ministry or agency of the Ministry has reasonable grounds to believe that the personal information is relevant to a person's qualification to hold a licence.

Testimony in civil suit

(3) No person to whom subsection (1) applies shall be required to give testimony in any civil suit or proceeding with regard to information obtained by the person in the course of the person's duties, employment, inquiry, investigation or inspection except in a proceeding under this Act or the regulations.

Certificate as evidence

**49.** A statement as to,

- (a) the licensing or non-licensing of any person;
- (b) the filing or non-filing of any document or material required or permitted to be filed with the Registrar; or
- (c) any other matter pertaining to licensing, non-licensing, filing or non-filing,

containing information from the records kept by the Registrar under this Act purporting to be certified by the Registrar under the seal of the Board is, without proof of the office or signature of the Registrar, admissible in evidence in any proceeding, in the absence of evidence to the contrary, as evidence of the facts stated therein.

**50.**—(1) A notice, order or other document under this Act or the regulations is sufficiently given, served or delivered if delivered personally or sent by first class mail addressed to the person to whom it is to be given, served or delivered at that person's last known address. Service

(2) A notice, order or other document sent by first class mail in accordance with subsection (1) shall be deemed to be given, served or delivered on the fifth day after the day of mailing, unless the person to whom it is sent establishes that the notice, order or other document was not received until a later date because of absence, accident, illness or other cause beyond that person's control. Idem

**51.**—(1) A funeral director who is registered with the Board of Funeral Services under the *Funeral Services Act* on the date this Act comes into force is deemed to be licensed as a funeral director until the expiration of the licence, unless the licence is sooner surrendered, suspended or revoked. Transition  
R.S.O. 1980,  
c. 180

(2) A person who is licensed with the Board of Funeral Services under the *Funeral Services Act* to establish and maintain a funeral services establishment on the date this Act comes into force is deemed to be licensed to operate a funeral establishment until the expiration of the licence, unless the licence is sooner surrendered, suspended or revoked. Idem

**52.** The board known as the Funeral Services Review Board is dissolved and any matter before the Board on the date this Act comes into force shall be dealt with by the Tribunal. Funeral  
Services  
Review  
Board not  
continued

**53.** The following are repealed: Repeals

1. The *Funeral Services Act*, being chapter 180 of the Revised Statutes of Ontario, 1980.
2. Section 3 of the *Mobility Rights Statute Law Amendment Act, 1985*, being chapter 5.
3. The *Prearranged Funeral Services Act*, being chapter 387 of the Revised Statutes of Ontario, 1980.

Commence-  
ment

**54.** This Act comes into force on a day to be named by proclamation of the Lieutenant Governor.

Short title

**55.** The short title of this Act is the *Funeral Directors and Establishments Act, 1989*.







# Bill 31

## An Act to revise the Cemeteries Act

The Hon. W. Wrye

*Minister of Consumer and Commercial Relations*

*1st Reading*      June 12th, 1989

*2nd Reading*

*3rd Reading*

*Royal Assent*



## EXPLANATORY NOTES

The Bill revises the existing *Cemeteries Act*.

The purpose of the Bill is to regulate the establishment and management of cemeteries and crematoria and to provide a larger measure of consumer protection. The main features of the Bill are:

1. Appointment of a Registrar to administer the Act.
2. Municipal control of the establishment, alteration and enlargement of cemeteries and crematoria, with appeal of municipal decisions to the Ontario Municipal Board.
3. Providing for the licensing of owners of cemeteries and crematoria and of sales representatives.
4. Provisions govern contracts for the sale of interment rights, supplies and services by owners of cemeteries and crematoria, providing information disclosure and rights of cancellation for pre-need purchases.
5. Telephone and door-to-door solicitation for the sale of interment rights, cemetery supplies and services is prohibited.
6. Provisions are made to protect unmarked burial sites, resolve their status and settle disputes regarding their disposition.
7. Provisions regarding Care and Maintenance Trust Funds (formerly Perpetual Care) are expanded to apply to monuments.
8. Provisions governing cemetery abandonment are streamlined, giving municipalities full title to abandoned sites and associated trust funds.

**Bill 31****1989****An Act to revise the Cemeteries Act**

HER MAJESTY, by and with the advice and consent of the Legislative Assembly of the Province of Ontario, enacts as follows:

**1. In this Act,**

Definitions

“burial site” means land containing human remains that has not been approved or consented to as a cemetery;

“by-laws”, when used in relation to a cemetery, means the rules under which a cemetery or crematorium is operated;

“cemetery” means land set aside to be used for the interment of human remains and includes a mausoleum, columbarium or other structure intended for the interment of human remains;

“cemetery services” means,

(a) in respect of a lot,

(i) opening and closing of a grave,

(ii) interring or disinterring human remains,

(iii) providing temporary storage in a receiving vault,

(iv) construction of a foundation for a marker,

(v) setting of corner posts,

(vi) providing,

(A) a tent or canopy,

(B) carrying and lowering devices, and

(C) ground cover,



for an interment service, and

- (vii) preparing flower beds and planting flowers and shrubs,
- (b) in respect of a crypt or compartment in a mausoleum,
  - (i) opening, closing and sealing of the crypt or compartment,
  - (ii) providing temporary storage in a vault or crypt,
  - (iii) providing a tent or canopy for an interment service, and
  - (iv) providing elevating devices,
- (c) in respect of a niche or compartment in a columbarium,
  - (i) opening, closing and sealing of the niche or compartment, and
  - (ii) providing a tent or canopy for an interment service,
- (d) in respect of a crematorium, all services provided by the owner of the crematorium at the crematorium, and
- (e) in respect of a cemetery, such other services as are provided by the owner of the cemetery at the cemetery;

“cemetery supplies” includes interment vaults, markers, flowers, liners, urns, shrubs and artificial wreaths and other articles intended to be placed in a cemetery;

“columbarium” means a structure designed for the purpose of interring cremated human remains in sealed compartments;

“commercial cemetery” means a cemetery operated for the purpose of making a profit for the owner;

“crematorium” means a building fitted with appliances for the purpose of cremating human remains and includes everything incidental and ancillary thereto;

“Director” means a Director appointed under the *Ministry of Consumer and Commercial Relations Act*; R.S.O. 1980,  
c. 274

“equity share” means a share of a class of shares that carries a voting right either under all circumstances or under some circumstances that have occurred and are continuing;

“human remains” means a dead human body and includes a cremated human body;

“income” means the interest or money earned, including the compounding thereof, by the investment of funds;

“inter” means the burial of human remains and includes the placing of human remains in a lot;

“interment rights” includes the right to require or direct the interment of human remains in a lot;

“interment rights holder” means a person with interment rights with respect to a lot and includes a purchaser of interment rights under the *Cemeteries Act*, being chapter 59 of the Revised Statutes of Ontario, 1980, or a predecessor of that Act;

“land registry office” means the land registry office or the land titles office in the area in which a cemetery is located;

“lot” means an area of land in a cemetery containing, or set aside to contain, human remains and includes a tomb, crypt or compartment in a mausoleum and a niche or compartment in a columbarium;

“marker” means any monument, tombstone, plaque, headstone, cornerstone, or other structure or ornament affixed to or intended to be affixed to a burial lot, mausoleum crypt, columbarium niche or other structure or place intended for the deposit of human remains;

“mausoleum” means a building or structure, other than a columbarium, used as a place for the interment of the human remains in sealed crypts or compartments;

“Minister” means the Minister of Consumer and Commercial Relations;

“municipality” means the corporation or other entity having municipal jurisdiction in the area in which a cemetery is located and includes a county government, police village,

regional municipality, city, town, village, township or improvement district or the council thereof;

“owner” means an owner of a cemetery or a crematorium;

“person” includes a board of trustees, local council of a municipality or other organization or group of persons organized for the purpose of operating or managing a cemetery;

“plot” means two or more lots in which the rights to inter have been sold as a unit;

“pre-need supplies or services” means cemetery supplies or services that are not required to be provided until the death of a person alive at the time the arrangements are made;

“prescribed” means prescribed by the regulations made under this Act;

“Registrar” means the Registrar appointed under this Act;

“sales representative” means,

- (a) a person who sells or offers for sale interment rights or cemetery supplies or services on behalf of a commercial cemetery, or
- (b) a person whose primary employment is selling interment rights or cemetery supplies or services;

“Tribunal” means The Commercial Registration Appeal Tribunal;

“trust fund” means a trust fund established for the purpose of this Act.

#### CONSENT TO ESTABLISH CEMETERY OR CREMATORIUM

Consent for  
cemetery,  
etc.

**2.** No person shall establish, alter or increase the capacity of a cemetery or crematorium without the consent of the Registrar.

Application  
for consent

**3.—(1)** An applicant for consent shall apply to the Registrar and,

- (a) pay the prescribed fee;

- (b) submit the prescribed documents showing the layout of the cemetery and the location of existing or proposed plots, lots, structures and fixtures; and
- (c) if the applicant is the owner of a commercial cemetery or a cemetery of a class prescribed for the purpose of this clause, pay a deposit in a prescribed amount into a Care and Maintenance Fund.

(2) If the cemetery or crematorium is proposed to be established or already exists in an area with municipal organization, the applicant, before applying for the consent of the Registrar, must obtain the approval to the proposal of the appropriate municipality. Approval required

(3) If the cemetery or crematorium is to be established or enlarged to encroach on land, in an area without municipal organization, that is Crown land at the time of the application for consent, the applicant, before applying for the consent of the Registrar, must obtain the approval to the proposal of the Minister of Natural Resources. Idem

**4.** A municipality that receives a request for an approval required by subsection 3 (2) may hold public hearings to determine if the approval is in the public interest. Public hearings

**5.—(1)** A municipality, upon receiving a request for approval, shall give or refuse to give the approval within a reasonable time after receiving the request. Decision

(2) In considering a request for an approval, the principle factor shall be the public interest. Public interest

(3) A municipality shall, upon arriving at a decision on an application, Notice of decision

(a) send a copy of the decision together with the reasons for it to the Registrar and to the applicant; and

(b) publish notice of the decision in a local newspaper.

(4) The applicant, Registrar or any person with an interest therein may, within fifteen days after publication of the notice of the decision, refer the decision of a municipality to the Ontario Municipal Board for a hearing. Appeal

(5) Despite subsection (4), if an applicant or the Registrar does not receive a copy of a decision until after the decision is published, the fifteen days referred to in subsection (4) apply Idem



after the applicant or Registrar, as the case may be, receives the copy.

Representation

(6) The Registrar is entitled to make representations to the Ontario Municipal Board in any appeal under subsection (4).

Board decision

**6.—**(1) The Ontario Municipal Board may reverse the decision appealed from and substitute its own decision.

Idem

(2) A decision of the Board that is substituted under subsection (1) shall be deemed to be the decision of the municipality.

Certificate of consent

**7.—**(1) The Registrar shall give a certificate of consent to the establishment, alteration or increase in the capacity of a cemetery or crematorium, as the case may be, if,

- (a) the applicant has the approval of the municipality or the Minister of Natural Resources;
- (b) the applicant is licensed to own that cemetery and is and will be on the granting of the licence in compliance with the requirements of this Act and the regulations and the laws intended for the protection of the environment and of health; and
- (c) where neither approval referred to in clause (a) is required, the Registrar is satisfied that the consent is in the public interest.

Notice of refusal to issue

(2) The Registrar, on refusing to give a certificate of consent, shall advise the applicant, in writing, of,

- (a) the reason for the refusal; and
- (b) the applicant's right to appeal.

Appeal

(3) An applicant who receives a notice under subsection (2) may appeal to the Tribunal within fifteen days after receiving the notice.

Order by Tribunal

(4) If the Tribunal finds that the applicant is in compliance with clauses (1) (a) and (b) or that giving the consent is in the public interest, as the case may be, the Tribunal shall order the Registrar to issue the certificate of consent applied for or a consent in a modified version.

Idem

(5) Upon receiving an order under subsection (4), the Registrar shall issue the certificate as ordered.

(6) A certificate of consent shall contain a sufficient description of the cemetery or crematorium so that the certificate may be registered in the appropriate land registry office. Registration

(7) Upon registration of a certificate of consent, the land described therein becomes a cemetery. Effect of registration

#### CLOSING CEMETERY

**8.—**(1) In this section and in sections 9, 10, 11, 12 and 13, a reference to a cemetery includes any part of a cemetery. Closing cemetery

(2) The Registrar may order a cemetery closed if the closing is in the public interest. Idem

(3) An order shall not be made under subsection (2) until, Notice

(a) notice of the intention to make the order is given in the manner and to the persons prescribed; and

(b) interested persons are given the opportunity to make submissions to the Registrar within such time as is prescribed.

(4) Notice is not required if, Idem

(a) the request is from the owner;

(b) no interments have been made in the cemetery to be closed; and

(c) the consent of all affected interment rights holders has been obtained.

**9.—**(1) In an order to close a cemetery, the Registrar may, Order

(a) declare a cemetery or a portion thereof closed;

(b) require the owner to disinter all human remains therein and specify the manner of disinterment and the manner and place of reintering or dealing with the remains;

(c) require the owner to remove any markers and relocate them to a specified place; and

(d) require the owner to provide or acquire equivalent interment rights for all holders of interment rights with respect to unused lots in the cemetery.

- Substitution (2) In an order to close a cemetery, the Registrar may designate another person to do anything that the owner may be required to do.
- Notice (3) The Registrar shall give every person who made a submission notice of the order and at the same time advise the person of the right of appeal.
- Coming into force (4) Subject to subsection (5), an order to close a cemetery comes into force thirty days after it is made unless there is an appeal filed before the order comes into force or the order sets out a later date.
- Idem (5) If submissions were made in respect of the order, the order comes into force thirty days after notice has been given to each person who made a submission unless there is an appeal filed before the order comes into force or the order sets out a later date.
- Idem (6) An order that is appealed comes into force upon being upheld by the Tribunal.
- Appeal **10.** A person with an interest therein may appeal, to the Tribunal,
- (a) an order to close a cemetery any time before the order comes into force; or
  - (b) a refusal to order a cemetery closed.
- Certificate **11.—**(1) The Registrar, upon being satisfied that the requirements in an order to close a cemetery have been complied with, shall issue a certificate, with a legal description of the land involved, that the cemetery is closed.
- Idem (2) Despite subsection (1), an applicant therefor is entitled to a certificate that a cemetery is closed if the cemetery had been closed by the Lieutenant Governor in Council but a certificate issued under subsection 59 (7) of the *Cemeteries Act*, being chapter 59 of the Revised Statutes of Ontario, 1980, or a predecessor of that subsection has not been registered.
- Registration (3) A certificate issued under this section may be registered in the appropriate land registry office.
- Effect of registration (4) Upon registration of a certificate of closing, the land described therein ceases to be a cemetery.
- Maintenance fund **12.—**(1) Where any money has been paid into a care and maintenance fund with respect to a cemetery that is to be

closed, the Registrar shall direct that money to be transferred to the trustee of the fund maintained by the owner of the cemetery into which the human remains are to be reinterred or where the interment rights are to be exercised.

(2) The amount transferred under subsection (1) is a credit against the amount required to be paid into the fund by the owner of the cemetery into which the human remains are to be reinterred or where the interment rights are to be exercised. Idem

**13.** Where any money has been paid into a pre-need assurance fund with respect to interment rights in a cemetery that is to be closed, the Registrar shall direct that money to be paid to the trustee of the fund maintained by the owner of the cemetery where alternative interment rights have been made available for the holders of interment rights in the cemetery to be closed. Pre-need  
assurance  
fund

#### LICENCES

**14.** No person shall own a cemetery or crematorium unless licensed under this Act to own that cemetery or crematorium. Licence  
required

**15.—(1)** A person may apply to the Registrar for a licence to own a cemetery or crematorium. Licence to  
own

(2) An applicant is entitled to a licence except if, Requirements

- (a) the applicant cannot reasonably be expected to be financially responsible in the operation of a cemetery or crematorium;
- (b) the past or present conduct of the applicant, the officers or directors of the applicant or persons holding more than 10 per cent of the equity shares of the applicant affords reasonable grounds for belief that the cemetery or crematorium will not be managed in accordance with the law and with integrity and honesty;
- (c) the applicant or managing employees of the applicant do not have the experience and competence required to manage the cemetery or crematorium in accordance with the law;
- (d) the applicant is carrying on activities that are, or will be if the applicant is licensed, in contravention of this Act or the regulations;



- (e) the applicant will, if licensed, be carrying on activities under this Act that are in contravention of another Act or a municipal by-law;
- (f) the applicant is unable to provide the resources and facilities required to manage a cemetery or crematorium; or
- (g) the applicant or an employee or agent of the applicant has made a false statement or provided false information in an application for a licence.

Issue of  
licence

(3) The Registrar shall issue a licence to own an identified cemetery or crematorium to an applicant therefor who pays the prescribed fee, complies with the regulations and is not disentitled under subsection (2).

Conditions  
attaching to  
licence

(4) A licence is subject to such conditions as may be consented to by the applicant, imposed by the Tribunal or prescribed.

Notice

(5) If the Registrar intends to refuse to issue a licence, the Registrar shall give the applicant notice of and reasons for the intention and, at the same time, advise the applicant of the right to appeal.

Appeal

(6) An applicant who receives a notice under subsection (5) may appeal the intended refusal to the Tribunal within fifteen days after receiving the notice.

Refusal to  
issue licence

(7) If no appeal is filed under subsection (6), the Registrar may refuse to issue the licence applied for.

Revocation  
of owner's  
licence

**16.—**(1) The Registrar may revoke or refuse to renew a licence to own a cemetery or a crematorium if,

- (a) the conduct or situation of the licensee is such as to disentitle the licensee from being granted a licence;
- (b) where the licensee is a corporation, the shareholders of the corporation have changed in the manner and to the extent prescribed; or
- (c) the Registrar has reasonable and probable grounds to believe that the continued operation of the cemetery or crematorium by the licensee,
  - (i) creates a risk to public health, safety or decency, or

- (ii) will result in a financial loss by members of the public because provisions of this Act or the regulations are not being complied with.

(2) If the Registrar intends to revoke or to refuse to renew a licence, the Registrar shall give the licensee notice of and reasons for the intention and, at the same time, advise the licensee of the right to appeal. Notice

(3) Any licensee who receives a notice under subsection (2) may appeal the intended revocation or refusal to the Tribunal within fifteen days after receiving the notice. Appeal

(4) If an appeal has been filed under subsection (3), the Registrar shall not revoke the licence unless the Tribunal determines that the licence should be revoked. Delay

(5) If no appeal is filed under subsection (3), the Registrar may revoke the licence after the time for appeal has expired. Where no appeal

(6) Section 14 does not apply to an owner whose licence is revoked so long as the Registrar is satisfied that the owner is making reasonable efforts to sell the cemetery or crematorium. Exception to licensing requirement

**17.—**(1) The Director may appoint a manager to operate a cemetery or crematorium in the place of the owner if, Appointment of manager

(a) the Director has reasonable and probable grounds, based on a statement under oath, to believe that the owner is doing or is about to do something in the operation of the cemetery or crematorium that,

(i) creates or is likely to create a risk to public health, safety or decency, or

(ii) is causing or is likely to cause financial loss to members of the public; or

(b) the owner's licence is revoked.

(2) A manager appointed under subsection (1) has all the powers of the owner with respect to the operation of the cemetery or crematorium including the power to exclude the owner and, if the owner is a corporation, the directors or officers of the corporation, from the premises of the business. Powers of manager

(3) From the appointment of a manager under subsection (1) until the appointment is cancelled, the owner being replaced does not have the authority to deal with any assets or Effect of appointment

trust funds relating to the cemetery or crematorium and shall not be involved in the operation of the cemetery or crematorium.

Appeal

(4) Any person affected by an appointment of a manager may apply to a judge of the Supreme Court for an order cancelling the appointment and the order may include such directions and conditions as seem appropriate.

Selling  
interment  
rights

**18.—**(1) No person shall sell interment rights unless that person does so as an agent acting on behalf of a licensed owner.

Selling  
supplies, etc.

(2) No person shall act as a sales representative on behalf of an owner unless that person is licensed as a sales representative and represents an owner specified in the sales representative's licence.

Exception for  
owners

(3) Subsections (1) and (2) do not apply to preclude a person licensed as an owner from selling rights, services or supplies to be used in or provided at a cemetery or crematorium owned by that person.

Licence to  
sell

**19.—**(1) An individual may apply to the Registrar for a licence to act as a sales representative on behalf of an owner.

Requirements  
for licence

(2) An applicant is entitled to a licence except if,

- (a) the past or present conduct of the applicant affords reasonable and probable grounds for believing that the applicant will not carry on business in accordance with the law and with integrity and honesty;
- (b) the applicant, in receiving the licence, would be in a position of apparent conflict of interest;
- (c) the applicant does not have a position with a licensed owner or a commitment to be hired by a licensed owner upon receiving a licence; or
- (d) the applicant has made a false statement or provided false information in an application for a licence.

Past conduct

(3) A conviction for an offence that involves misrepresentation or a lack of integrity or honesty is evidence, in the absence of evidence to the contrary, that the person convicted will not carry on business in accordance with the law and with integrity and honesty within the meaning of clause (2) (a).

(4) An applicant's intention to work for more than one owner is evidence, in the absence of evidence to the contrary, of an apparent conflict of interest.

Conflict of interest

(5) The Registrar shall issue a licence to act as a sales representative to every applicant therefor who pays the prescribed fee, complies with the regulations and is not disentitled under subsection (2).

Issue of licence

(6) A licence is subject to such conditions as may be consented to by the licensee, imposed by the Tribunal or prescribed.

Conditions attaching to licence

(7) If the Registrar intends to refuse to issue a licence, the Registrar shall give the applicant notice of and reasons for the intention and, at the same time, advise the applicant of the right to appeal.

Notice

(8) An applicant who receives a notice under subsection (7) may appeal the intended refusal to the Tribunal within fifteen days after receiving the notice.

Appeal

(9) If no appeal is filed under subsection (8), the Registrar may refuse to issue the licence.

Refusal to issue licence

**20.—**(1) The Registrar may revoke, suspend or refuse to renew a sales representative's licence if the conduct or situation of the licensee is such as to disentitle the licensee from being granted a licence.

Revoking, suspending or refusing to renew sales licence

(2) If the Registrar intends to revoke, suspend or refuse to renew a licence, the Registrar shall give the licensee notice of and reasons for the intention and, at the same time, advise the licensee of the right to appeal.

Notice

(3) If there are grounds to suspend a licence and the Registrar considers it to be in the public interest that the licence be suspended immediately, the Registrar may, by order, suspend a sales representative's licence with the order taking effect when it is made.

Immediate suspension

(4) An immediate suspension expires fifteen days after it is appealed to the Tribunal unless, before the fifteen days expire, the Tribunal extends the suspension.

Idem

(5) Any licensee who receives a notice under subsection (2) may appeal the intended revocation or suspension to the Tribunal within fifteen days after receiving the notice.

Appeal



- Idem (6) Any licensee whose licence is suspended under subsection (3) may appeal the suspension to the Tribunal.
- Delay (7) If an appeal has been filed under subsection (5), the Registrar shall not revoke or suspend the licence unless the Tribunal determines that the licence should be revoked or suspended.
- Where no appeal (8) If no appeal is filed under subsection (5), the Registrar may revoke or suspend the licence after the time for appeal has expired.
- Application **21.**—(1) A person who is refused a licence or a renewal of a licence under this Act may apply for a licence only after one year has passed since the refusal.
- Idem (2) A person whose licence is revoked under this Act may apply for a licence only after one year has passed since the revocation.
- Continuation **22.** The licence of a licensee who has applied for a renewal of the licence continues until,
- (a) the renewal is granted; or
  - (b) if the licensee is served with a notice that the Registrar intends to refuse to renew, the time for appeal has expired or, if an appeal is required, the matter has been finally determined.

#### CONSUMER PROTECTION

- Interment rights **23.**—(1) An interment rights holder may require, by written demand, the owner to repurchase the rights at any time before they are used.
- Idem (2) Every owner who receives a demand made under subsection (1) shall repurchase the interment rights within thirty days after receiving the demand.
- Idem (3) The repurchase price of interment rights shall be determined in the prescribed manner.
- Idem (4) An interment rights holder or the personal representative of the holder has the right to inter any human remains in a lot or other facility approved under this Act in accordance with the by-laws governing the facility.
- Idem (5) An interment rights holder or the personal representative of the holder may erect a commemorative marker on a lot

or other receptacle for human remains if the erection of the marker is not in contravention of the by-laws governing the facility.

(6) Every person has the right to reasonable access to a lot at any time except as prohibited by the by-laws governing the facility. Idem

(7) An interment rights holder and the relatives of any person whose remains are interred in a cemetery have the right to decorate the appropriate lot if the decoration is not in contravention of the by-laws governing the facility. Idem

(8) Subsection (1) does not apply to require repurchase of interment rights in a plot in which any interment rights have been exercised. Exception

**24.—**(1) A purchaser of pre-need supplies or services from an owner may cancel, by written notice to the owner, the contract to purchase at any time before the services or the supplies are provided or if the owner contravenes subsection (5). Pre-need  
services or  
supplies

(2) Subsection (1) or (5) does not apply if the supplies or services are provided within thirty days after the contract is made because of the death of the person for whom the supplies or services were contracted. Idem

(3) Subject to subsection (4), an owner who receives a notice that a contract is cancelled under this section shall refund to the purchaser all money, together with all income thereon, received under the contract within thirty days after receiving the notice. Idem

(4) An owner to whom this section applies may retain a service fee determined in the prescribed manner unless the contract is cancelled within thirty days after it is made. Idem

(5) No owner shall provide pre-need supplies or services under a contract within the thirty-day period immediately following the day the contract is made. Prohibition

(6) This section applies to contracts for pre-need supplies or services whether the contracts were made before or after this section comes into force. Application

**25.—**(1) A contract for the purchase of interment rights or cemetery supplies or services is not enforceable by an owner unless, Contract  
requirements

- (a) it is written, signed by both parties and complies with the regulations;
- (b) it sets out the purchaser's cancellation rights under this Act and whether or not cemetery supplies or services are to be provided before the death of the person for whom they are contracted;
- (c) the owner complies with subsections (2) and (3); and
- (d) the owner delivers a signed copy of the contract to the purchaser at the time the contract is made.

Idem           (2) An owner who sells interment rights must deliver to the purchaser at the time the contract is made a copy of the by-laws of the cemetery and a certificate of interment rights.

Idem           (3) An owner who sells pre-need supplies or services must set out in the contract exactly what the supplies or services are and the price charged for them.

Refund with interest       (4) An owner who receives money under a contract that is not enforceable because of the application of this section shall refund to the purchaser, immediately upon written demand, with interest at the prescribed rate, all money received.

Idem           (5) Subsection (4) applies even though the owner has paid the money into a trust fund that is not accessible to the owner.

Exception       (6) Subsection (4) does not apply, in the case of interment rights, after the rights are used or, in the case of cemetery supplies or services, after the supplies or services are provided.

Public information       **26.** Every owner shall make such information as is prescribed available to the public in the manner and form prescribed.

Price list       **27.—**(1) Every owner shall file with the Registrar a price list of all interment rights and cemetery services and supplies that may be sold and all charges that may be made by that owner.

Idem           (2) No owner shall charge or collect or receive money for interment rights or cemetery supplies or services that is more than the price for the rights, supplies or services filed by the owner with the Registrar and not disallowed.

(3) The Registrar, upon receiving a price list, may disallow, within thirty days after the list is filed, any price that, in the opinion of the Registrar, is excessive or significantly higher than current market price for the supplies, services or rights within the applicable area. Approval of list

(4) The Registrar shall give immediate written notice to the owner who filed the price list of any price on the list that is disallowed and, in the notice, shall give the reasons for the disallowance. Notice of disallowance

(5) If the Registrar disallows a price on a price list, the owner who filed the list may appeal the disallowance to the Tribunal. Appeal

(6) An owner who has charged any person a price that is disallowed by the Registrar shall pay, forthwith, to that person the difference between the price charged and the price allowed. Repayment

**28.—**(1) If the Registrar believes, on reasonable and probable grounds, that any person licensed under this Act has made a false or misleading public representation or a representation that is in contravention of this Act or the regulations, the Registrar shall order that person to stop making the representation and, in the order, shall set out the reasons for the order. Advertising

(2) A person who receives an order under subsection (1) shall immediately comply with the order and shall refrain from making the representation, in any form, in the future. Compliance with order

(3) Any person who receives an order under subsection (1) may appeal the order to the Tribunal. Appeal

(4) The Tribunal may issue a stay of any order made by the Registrar under subsection (1). Stay of order

**29.—**(1) No person shall contact, in any way, a person in a hospital, nursing home or such other institution as is prescribed for the purpose of suggesting that a contract for the purchase of interment rights or cemetery supplies or services be made. Soliciting prohibited

(2) No person shall contact, by telephone or in person, a person for the purpose of suggesting that a contract for the purchase of interment rights or cemetery supplies or services be made. Idem



- Exception (3) This section does not prohibit any contact made at the request of the person being contacted.
- Regulations (4) The Lieutenant Governor in Council may make regulations defining “contract” for the purpose of this section.
- Abandoned interment rights **30.**—(1) A cemetery owner may apply to the Registrar for a declaration that interment rights are abandoned.
- Idem (2) An application may be made under subsection (1) only in respect of interment rights that had been sold at least twenty years before the application and have not been used.
- Inquiry (3) The Registrar, on receiving an application under subsection (1), shall make such inquiry and direct the applicant to give such notices as seem reasonable in the circumstances.
- Declaration (4) Upon being satisfied that the rights are abandoned, the Registrar shall issue a declaration to that effect.
- Notice (5) The Registrar shall give notice of the declaration or the decision to not make the declaration to the applicant and to every person who has indicated to the Registrar an interest in the matter.
- Appeal (6) Any person who has an interest in the matter may appeal the decision of the Registrar to the Tribunal within thirty days after notice of the decision is given under subsection (5).
- Right to sell abandoned rights **31.** A cemetery owner may resell interment rights that have been declared abandoned,
- (a) if there is no appeal, at the end of the time for appeal; or
- (b) if there is an appeal, when the appeal has been finally determined supporting the declaration.
- Rights holder's protection **32.**—(1) Any person whose interment rights have been resold after being declared abandoned may apply to the Registrar for redress.
- Idem (2) The Registrar, upon receiving an application under subsection (1), shall order the cemetery owner or the owner's successor, as the case may be, to provide, subject to subsection (6), better or equivalent interment rights in that cemetery or to refund an amount determined as prescribed.

(3) Any person whose interment rights have been declared abandoned but have not been resold may apply to the Registrar to have those rights restored. Idem

(4) The Registrar, upon receiving an application under subsection (3), shall order that the declaration be cancelled and that the rights be restored to the person entitled thereto. Idem

(5) This section does not apply in respect of interment rights in cemeteries that are abandoned. Exception

(6) If the cemetery referred to in subsection (2) is one in which interment rights are not available but the owner owns a cemetery in which interment rights are available, the applicant shall be given the option of accepting better or equivalent interment rights in that cemetery. Idem

**33.—**(1) If a marker has been erected on a lot that is the subject-matter of a declaration of abandonment, the cemetery owner shall remove and store it at the owner's expense for at least twenty years. Markers

(2) If an order is made under subsection 32 (2) to provide alternate interment rights, the cemetery owner shall re-erect the marker at the new site at the owner's expense. Idem

(3) If subsection (2) does not apply, the cemetery owner may dispose of the marker at the expiration of the twenty-year period. Idem

**34.—**(1) A cemetery owner who has available space shall provide, upon receiving a written instruction from a welfare administrator, Assisted burials, cemetery

- (a) a lot for the interment of the remains of any person referred to in the instruction;
- (b) opening and closing services in conjunction with the interment; and
- (c) such other related services as are prescribed.

(2) A crematorium owner shall provide, upon receiving a written instruction from a welfare administrator, Crematorium

- (a) a crematorium service for the remains of any person referred to in the instruction; and
- (b) such other related services as are prescribed.

- Exception (3) Subsections (1) and (2) do not apply to require a religious organization to inter or cremate the remains of a person who is disentitled to burial or cremation in a cemetery or crematorium owned by that organization.
- Payment (4) An owner who provides a service under this section is entitled to be paid the prescribed amount for the service by the welfare administrator.
- Welfare administrator (5) The Lieutenant Governor in Council may make regulations defining “welfare administrator” for the purpose of this section and designating persons by title or job description who are considered welfare administrators for this purpose.

#### TRUST FUNDS

- Care and maintenance trust funds 1987, c. 33 **35.—**(1) Every cemetery owner who sells, assigns or transfers interment rights shall establish with a corporation registered under the *Loan and Trust Corporations Act, 1987*, with that corporation as trustee, a trust fund designated the “Care and Maintenance Fund” for the purpose of providing money for the care and maintenance of the cemetery.
- Payments into fund (2) An owner who is required to establish a fund under this section shall pay into the fund prescribed amounts within the prescribed times.
- Payments out of fund (3) A trustee of a fund established under this section shall pay the income from the fund, after deducting therefrom the trustee’s fees, to the owner of the cemetery involved.
- Use of money (4) An owner receiving money pursuant to subsection (3) shall use the money for the upkeep of the cemetery and the markers and structures therein in the prescribed manner.
- Capital portion (5) No trustee of a fund established under this section shall pay out any of the capital portion of the fund.
- Idem (6) Subsection (5) does not apply to preclude a trustee from transferring the fund, with the consent of the Registrar, to another trustee.
- Municipal owners (7) Despite subsection (1), an owner that is a municipality may act as the trustee of a Care and Maintenance Fund established by that municipality.
- Pre-need assurance trust funds 1987, c. 33 **36.—**(1) Every owner who sells pre-need cemetery supplies or services shall establish with a corporation registered under the *Loan and Trust Corporations Act, 1987*, with that

corporation as trustee, a trust fund designated as the "Pre-need Assurance Fund".

(2) Subsection (1) applies to an owner in respect of sales made by a person that the owner is associated or affiliated with in a manner that is prescribed. Idem

(3) An owner who is required to establish a fund under this section shall pay into the fund all money received for pre-need supplies or services within the prescribed times. Payments into fund

(4) A trustee of a fund established under this section shall hold all money received for the benefit of the purchaser until that portion of the contract in respect of which the money was paid is completed. Trust funds

(5) When a portion of a contract is completed, the trustee shall pay to the owner the lesser of, Idem

(a) the current market price filed with the Registrar for the supplies or services; or

(b) an amount equal to the payments made for the supplies or services together with income accrued on those payments.

(6) If the amount referred to in clause (5) (b) exceeds the price referred to in clause (5) (a), the trustee shall pay the amount of the excess to the owner. Idem

(7) If a contract in respect of which money is held in the trust fund is cancelled, the trustee shall pay, to the owner, the amount of the initial payments together with income accrued on that amount. Prior cancellation

(8) Subject to subsection 24 (4) (retention of service fee), an owner who receives a payment under subsection (7) shall pay the amount to the purchaser involved within twenty days after receiving the payment. Payment to purchaser

(9) An owner who receives a payment under subsection (6) shall pay the amount to the purchaser or, if an interment has taken place, to the estate of the person interred within twenty days after receiving the payment. Idem

(10) Despite subsection (1), an owner that is a municipality may act as the trustee of a Pre-need Assurance Fund established by that municipality. Municipal owners



Restrictions  
on trust  
agreements  
R.S.O. 1980,  
c. 512

**37.** No investment of money in a trust established pursuant to this Act shall be made except as permitted under section 26, 27 or 28 of the *Trustee Act* despite any other authorization or direction in the trust agreement.

Marker  
installation

**38.**—(1) Every person installing a marker in a cemetery shall pay to the cemetery owner the prescribed amount.

Payment into  
fund

(2) An owner receiving money pursuant to subsection (1) shall pay the money into the Care and Maintenance Fund established for that cemetery.

Idem

(3) An owner who does not receive payment under subsection (1) for a marker shall pay into the Care and Maintenance Fund a prescribed amount.

Trust funds  
held by  
owner

**39.**—(1) All money received by an owner that is required to be paid into a trust fund but that is not immediately turned over to a trustee of a trust fund shall be deposited by the owner in a trust account with a credit union or caisse populaire registered under the *Credit Unions and Caisses Populaires Act*, a chartered bank of Canada, the Province of Ontario Savings Office or a trust or loan corporation registered under the *Loan and Trust Corporations Act, 1987*.

R.S.O. 1980,  
c. 102

1987, c. 33

Idem

(2) Money deposited by an owner in a trust account under subsection (1) shall be placed by the owner into a trust fund or otherwise paid out in accordance with this Act or the regulations within the time prescribed.

Providing  
information,  
etc.

**40.**—(1) The Registrar or the Public Trustee may require any owner or trustee to provide,

- (a) any information on trust accounts or trust funds that the owner or trustee is involved with; and
- (b) audited financial statements on any trust account or trust fund relating to a cemetery or crematorium that the owner or trustee is involved with.

Idem

(2) Every owner or trustee who receives a request pursuant to subsection (1) shall forthwith provide all the information or statement required or an explanation as to why it is not possible to provide the information or statement.

Surrogate  
Court

**41.**—(1) The Registrar or the Public Trustee may apply to the Surrogate Court to pass the accounts of any trust fund.

(2) The court, on passing any account, may review and pass upon any agreement made by an owner of a cemetery or crematorium. Idem

(3) The court, on passing any account, may make any order that it considers necessary to ensure that the trust is carried out. Idem

**42.** No cemetery or crematorium owner shall charge or receive any compensation or payment for the effort or expense of establishing or maintaining a trust fund. No compensation to owner

**43.—**(1) Despite subsections 35 (1) and 36 (1), an owner who does not have a practical alternative may require the Public Trustee to act as a trustee for that owner's Care and Maintenance Fund or Pre-need Assurance Fund. Use of Public Trustee

(2) The Registrar and the Public Trustee have an interest in all trust funds. Interested parties

#### CEMETERY AND CREMATORIUM OPERATIONS

**44.—**(1) Every cemetery owner shall maintain, without charge to interment rights holders, the grounds of the cemetery, including all lots, structures and markers, to ensure the safety of the public and to preserve the dignity of the cemetery. Maintenance by cemetery owner

(2) Despite subsection (1), an owner of a non-commercial cemetery may charge interment rights holders, at a rate approved by the Registrar, for the maintenance of lots and markers that were sold before 1955 if there were no trust funds collected for that purpose. Exception

**45.** No owner shall carry on business, in a manner prescribed, in conjunction with a person licensed to operate a funeral establishment or transfer service. Operating with funeral establishment, etc.

**46.** Every cemetery owner shall ensure that all interments in the cemetery are carried out in a decent and orderly manner and that quiet and good order are maintained in the cemetery at all times. Good order

**47.** No person shall inter human remains except in a cemetery that has been consented to by the Registrar and is owned by an owner licensed under this Act. Interment in cemetery only

**48.** If a marker in a cemetery presents a risk to public safety because it is unstable, the owner of the cemetery shall Repairing markers

do whatever is necessary by way of repairing, resetting or laying down the marker so as to remove the risk.

Mortgage on cemetery

**49.**—(1) No encumbrance or charge on a cemetery or crematorium is enforceable unless it was given as security for money borrowed for,

- (a) the purpose of improving the facilities provided;
- (b) the purpose of acquiring land for a cemetery or crematorium; or
- (c) a purpose, approved by the Registrar, relating to the operation of the cemetery or crematorium.

Restriction

(2) No encumbrancer claiming an interest in a cemetery or crematorium may deal with the cemetery or crematorium except in accordance with this Act.

By-laws

**50.**—(1) No person shall operate a cemetery or crematorium except in accordance with the by-laws applying to that cemetery or crematorium.

Owner's by-laws

(2) An owner of a cemetery or crematorium may make by-laws affecting the operation of the cemetery or crematorium.

When effective

(3) No by-law made by an owner is effective until it is filed with and approved by the Registrar.

Prescribed by-laws

(4) The Lieutenant Governor in Council may make regulations prescribing by-laws that apply to cemeteries or crematoria or to any prescribed classes of cemeteries or crematoria.

Notice of by-laws

(5) An owner filing a by-law shall give such notice as is prescribed to such classes of persons as are prescribed.

Approval by Registrar

(6) A by-law filed with the Registrar under this section shall be approved by the Registrar unless the approval is not in the public interest or the effect of the by-law is to give the owner an unreasonable or unfair competitive advantage over another supplier of cemetery services or supplies.

Revocation of by-laws

(7) The Registrar may revoke any by-law that the Registrar could have refused to approve under subsection (6).

Idem

(8) Subsection (7) applies even though the Registrar has previously approved the by-law.

Notice of disallowance or revocation

(9) If the Registrar intends to refuse to approve or revoke a by-law, the Registrar shall give the owner notice of the inten-

tion and, at the same time, advise the owner of the right to appeal.

(10) An owner who receives a notice under subsection (9) may appeal the intended refusal or revocation to the Tribunal within fifteen days after receiving the notice. Appeal

(11) If an appeal is filed against an intended revocation, the Registrar shall not revoke the by-law unless the Tribunal determines that the by-law should be revoked. Delay in revocation

(12) If no appeal is filed against an intended revocation, the Registrar may revoke the by-law after the time for appeal has expired. Where no appeal

**51.**—(1) Subject to subsection (2), no person shall disinter any human remains without, Disinterment

(a) the prior consent of the interment rights holder; and

(b) notifying the proper medical officer of health.

(2) Subsection (1) does not apply to a disinterment ordered by, Where consent not required

(a) a court of competent jurisdiction;

(b) a coroner appointed under the *Coroners Act*; or R.S.O. 1980, c. 93

(c) the Attorney General or Solicitor General for Ontario.

(3) For the purpose of clause (1) (a), the consent of the Registrar may be substituted for that of the interment rights holder if, Idem

(a) the whereabouts of an interment rights holder are not known;

(b) the interment rights holder is not readily ascertainable; or

(c) the interment rights holder is not able to consent.

(4) No person shall disinter human remains except in accordance with the regulations. Compliance with regulations

(5) Clause (1) (b) does not apply to the disinterment of cremated human remains. Exception



Consent of  
Registrar

**52.**—(1) The Registrar, before consenting to a disinterment, shall consider whether any known person may have an interest in the disposition of the remains and, if there may be such a person, shall order that notice of the intention to disinter be given.

Notice of  
intention

(2) A notice of intention to disinter shall be given in the manner and form set out in the order.

Objections

(3) Any person objecting to a disinterment may file a written objection with the Registrar at any time before the consent of the Registrar is given.

Idem

(4) If any person files an objection to a disinterment, the Registrar shall determine whether that person has an interest in the remains and, if so, shall ascertain the person's wishes.

Conditions  
for consent

(5) In giving a consent to a disinterment, the Registrar shall take into account the wishes of any person with an interest in the remains and make the consent subject to such conditions as the Registrar considers appropriate.

Notice of  
decision

(6) Notice of the Registrar's decision shall be given to the person who applied for the consent, to any person to whom notice is given under subsection (1) and to any person filing an objection.

Appeal

(7) A person receiving a notice under subsection (6) may appeal, to the Tribunal, the Registrar's decision within fifteen days after receiving the notice.

Delay

(8) If an appeal is filed under subsection (7), the Registrar shall not consent to the disinterment unless the Tribunal determines that the disinterment should proceed.

Where no  
appeal

(9) If no appeal is filed under subsection (6), the Registrar may consent to the disinterment after the time for appeal has expired.

Attendance  
by medical  
officer

**53.**—(1) A medical officer of health has the authority to attend at, supervise and direct a disinterment.

Diseases

1983, c. 10

(2) If a medical officer of health determines that remains are those of a person who died of a communicable disease within the meaning of the *Health Protection and Promotion Act, 1983*, the remains shall not be dealt with in any way except as prescribed by the regulations made under that Act.

Certificate  
required

**54.** No person shall remove human remains from a cemetery unless a certificate of a medical officer of health or the

cemetery owner confirming that this Act and the regulations have been complied with is affixed to the container.

**55.** A burial certificate under the *Vital Statistics Act* is not required to reinter human remains that have been disinterred in accordance with this Act and the regulations.

R.S.O. 1980,  
c. 524,  
does not  
apply

**56.—(1)** No person shall cremate human remains except in a crematorium that has been established with the consent of the Registrar and is owned by an owner licensed under this Act.

Cremation

(2) No person shall cremate human remains,

Prohibitions

(a) for which there is not a coroner's certificate supplied by the Ministry of Consumer and Commercial Relations;

(b) in a container made of, or containing, non-flammable or hazardous material or a prescribed material; or

(c) in which a pacemaker or other prescribed device is implanted.

(3) Except if required by a welfare administrator, a crematorium owner has the right to refuse to cremate any human remains.

Right to  
refuse

**57.** Every crematorium owner shall ensure that all cremations in the crematorium are carried out in a decent and orderly manner and that quiet and good order are maintained in the crematorium at all times.

Good order

**58.—(1)** Any person who purchases a cremation service shall deposit, at the request of the crematorium owner, a prescribed amount with the owner to cover the cost of interring the cremated remains.

Deposit re  
disposal

(2) An owner receiving money under subsection (1) shall hold the money in trust.

Held in trust

(3) If the cremated remains are claimed by the interment rights holder within one year after the cremation, the owner shall refund the money to the person entitled thereto at the time of the claim.

Refund

(4) If, after one year, the cremated remains have not been claimed and the owner has made reasonable efforts to contact the representatives of the deceased, the owner may inter them

Owner's  
compensation

and is then entitled to the money held in trust as compensation.

Neglected  
cemetery

**59.**—(1) A municipality may order a cemetery owner who does not keep the cemetery in good order and repair to restore it to good order and repair.

Repairs

(2) If an owner does not restore a cemetery as specified in an order given under subsection (1) within such reasonable time as is set out in the order, the municipality may have the required work done and recover the costs thereof from the owner.

Abandoned  
cemeteries

**60.**—(1) An application to declare a cemetery abandoned may be made to a judge of the District Court if the owner of the cemetery,

(a) cannot be found or is unknown;

(b) is unable to maintain it;

(c) was a corporation that was dissolved; or

(d) is not licensed as an owner under this Act.

Application

(2) An application to declare a cemetery abandoned may be made by the owner of the cemetery, the municipality or the Registrar.

Notice of  
application

(3) If the application is not made by the Registrar, the person making the application must give notice of the application to the Registrar.

Costs

(4) The municipality is responsible for the cost of an application under this section including the cost of a survey of the land involved.

Declaration

(5) A judge to whom an application is made under subsection (1), upon being satisfied that there is a basis for the application, shall, by order, declare the cemetery that is the subject-matter of the application to be abandoned.

Municipality  
becomes  
owner

(6) Upon a declaration that a cemetery is abandoned being registered in the appropriate land registry office, the municipality becomes the owner of the cemetery with all the rights and obligations in respect to the cemetery and the assets, funds and trust accounts related thereto that the previous owner had.

(7) A declaration under this section may exempt the municipality being declared the owner from any provision of this Act or the regulations that it would be inappropriate, in the circumstances, for a new owner to be subject to.

Exemptions

(8) Upon an application being made to declare a cemetery abandoned, the municipality within which the cemetery is situated is responsible for the maintenance of the cemetery until the application is disposed of.

Maintenance

**61.** The Registrar may require any owner who has an interest in a cemetery that appears to be abandoned or neglected to maintain that cemetery as a condition of retaining a licence to own a cemetery or crematorium.

Dual interest

ADMINISTRATION

**62.—**(1) There shall be a Registrar appointed for the purposes of this Act.

Registrar

(2) There shall be one or more Deputy Registrars appointed who may exercise such powers and perform such duties of the Registrar as are delegated by the Registrar.

Deputy Registrars

(3) The Registrar, Deputy Registrars and all other employees necessary for the administration of this Act shall be appointed under the *Public Service Act*.

Application of R.S.O. 1980, c. 418

**63.—**(1) The Registrar may appoint inspectors to carry out inspections for the purpose of determining whether there is compliance with this Act and the regulations.

Inspectors

(2) An inspector exercising a power under this Act shall, on request, produce his or her certificate of appointment.

Certificate of appointment

**64.—**(1) For the purpose of ensuring compliance with this Act and the regulations, an inspector may,

Inspections

- (a) enter any place at any reasonable time;
- (b) request the production for inspection of documents or things that may be relevant to the inspection;
- (c) inspect and, upon giving a receipt therefor, remove documents or things relevant to the inspection for the purpose of making copies or extracts;
- (d) inquire into negotiations, transactions, loans or borrowings of a licensee and into assets owned,



acquired or disposed of by a licensee that are relevant to an inspection;

- (e) conduct such tests as are reasonably necessary to determine the integrity of a structure, fence or marker in a cemetery; and
- (f) remove materials or substances for examination or test purposes subject to the licensee or other occupant of the premises being notified thereof.

Entry to  
dwellings

(2) Subsection (1) does not apply to confer a power of entry to a room actually used as a dwelling without the consent of the occupier.

Warrant

(3) A justice of the peace may issue a warrant authorizing the person named in the warrant,

- (a) to do anything set out in clause (1) (a), (c), (e) or (f);
- (b) to enter and search a room actually used as a dwelling; or
- (c) to search for and seize any document or thing relevant to the inspection.

Requirements  
for warrant  
to issue

(4) A warrant may be issued under subsection (3) if the justice of the peace is satisfied on information under oath that in the case of a warrant to be issued under,

- (a) clause (3) (a), an inspector has been prevented from doing anything permitted under clause (1) (a), (c), (e) or (f) or there is reasonable ground to believe that an inspector may be prevented from doing any of those things;
- (b) clause (3) (b), it is necessary that a room actually used as a dwelling be entered for the purposes of carrying out an inspection or there is, in such a room, a document or thing that there is reasonable ground to believe is relevant to an inspection under this Act; or
- (c) clause (3) (c), it is necessary to search for and seize a document or thing that there is reasonable ground to believe will afford evidence relevant to a contravention of this Act or the regulations.

(5) A warrant issued under this section shall specify the hours and days during which it may be executed.

Execution of warrant

(6) Unless renewed, a warrant under this section expires not later than thirty days after the date on which it is made.

Expiry

(7) A warrant under this section may be issued or renewed upon application without notice.

Notice not required

(8) A warrant under this section may be renewed for any reason for which it may be issued.

Renewal of warrant

(9) A person doing any thing under the authority of a warrant issued under this section is authorized to call on such police officers to assist and to use such force as is necessary in the execution of the warrant.

Assistance

(10) An inspector carrying out an inspection, with or without a warrant, may be accompanied by such persons with expertise in the subject-matter of the inspection as the inspector considers necessary.

Use of experts

(11) An investigator taking material in order to copy it shall make the copy with reasonable dispatch and shall promptly return the material taken.

Copies

(12) Copies of, or extracts from, documents and things removed under this section and certified as being true copies of, or extracts from, the originals by the person who made them are admissible in evidence to the same extent as, and have the same evidentiary value as, the documents or things of which they are copies or extracts.

Admissibility of copies

**65.—**(1) No person shall obstruct an inspector in carrying out an inspection under this Act or withhold, destroy, conceal or refuse to provide any relevant information or thing required for the purpose of the inspection.

Obstruction of inspector

(2) It is a condition of each licence issued under this Act that the licensee facilitate an inspection relevant to that licence.

Facilitating inspection

**66.—**(1) If the Director has reasonable and probable grounds to believe that the owner of a cemetery or crematorium is doing or is about to do something that will jeopardize the public interest or the proper care and maintenance of a cemetery, the Director may direct any person holding, having on deposit or controlling assets of the owner or trust funds under the control of the owner to hold the assets or trust

Freezing assets

funds until further instructions are received from the Director to release a particular asset or trust fund from the direction.

Scope of  
direction

(2) In the case of a bank or a corporation, a direction under subsection (1) applies only to the offices, branches or agencies thereof named in the direction.

Application  
for directions

(3) Any person named in a direction issued under subsection (1), if in doubt as to the application of the direction to particular assets or trust funds, may apply to the Director for an order of clarification.

Revocation  
or  
amendment  
of direction

(4) On an application of the owner or any other person having an interest therein, the Director may make an order on such conditions as are set out in the order revoking the direction or consenting to the release of a particular asset or trust fund from the direction.

Appeal

(5) Any person affected by a direction or order of the Director made under this section or a refusal to make an order may appeal to the Tribunal.

Restraining  
order

**67.—**(1) If the Director is of the opinion that any person is not complying with this Act or the regulations, despite the imposition of any penalty in respect of the non-compliance and in addition to any other remedy available, the Director may apply to a judge of the High Court for an order directing the person to comply.

Idem

(2) Upon an application under subsection (1), the judge may make the order applied for or such other order as the judge thinks appropriate.

Idem

(3) An appeal lies to the Divisional Court from an order made under subsection (2).

#### BURIAL SITES

Disturbing  
burial site  
prohibited

**68.** No person shall disturb or order the disturbance of a burial site or artifacts associated with the human remains except,

- (a) on instruction by the coroner; or
- (b) pursuant to a site disposition agreement.

Unmarked  
burial sites

**69.** Any person discovering or having knowledge of a burial site shall immediately notify the police or coroner.

**70.**—(1) The Registrar may order the owner of land on which a burial site is discovered to cause an investigation to be made to determine the origin of the site. Investigation

(2) Section 68 does not apply to a person investigating the nature or origin of the site who is disturbing the site in the course of the investigation. Idem

(3) A person conducting an investigation shall do so with the minimum disturbance to the site that is reasonable in the circumstances. Idem

(4) If the Registrar is of the opinion that an investigation under subsection (1) would impose an undue financial burden on the land owner, the Registrar shall undertake the investigation. Idem

**71.**—(1) As soon as the origin of a burial site is determined, the Registrar shall declare the site to be, Declaration

- (a) an unapproved aboriginal peoples cemetery;
- (b) an unapproved cemetery; or
- (c) an irregular burial site.

(2) For the purpose of subsection (1), Interpretation

- (a) an irregular burial site is a burial site that was not set aside with the apparent intention of interring therein human remains;
- (b) an unapproved cemetery is land set aside with the apparent intention of interring therein, in accordance with cultural affinities, human remains and containing remains identified as those of persons who were not one of Canada's aboriginal peoples;
- (c) an unapproved aboriginal peoples cemetery is land set aside with the apparent intention of interring therein, in accordance with cultural affinities, human remains and containing remains identified as those of persons who were one of Canada's aboriginal peoples.

**72.**—(1) The Registrar, on declaring a burial site to be an unapproved aboriginal peoples cemetery or an unapproved cemetery, shall serve notice of the declaration on such persons or class of persons as are prescribed. Site  
disposition  
agreement



- Idem (2) All persons served with notice under subsection (1) shall enter into negotiations with a view of entering into a site disposition agreement.
- Idem (3) If a site disposition agreement is not made within the prescribed time, the Registrar shall refer the matter to arbitration.
- Idem (4) Despite subsection (3), the Registrar, if of the opinion that an agreement may be reached, may defer referring the matter to arbitration so long as there appears to be a reasonable prospect of an agreement being reached.
- Arbitrated settlement **73.** The persons named in an arbitrated settlement who have been given the opportunity to fully participate in the arbitration process are bound by the settlement whether they chose to participate or not.
- Irregular burial site **74.**—(1) An owner of land that contains an irregular burial site shall ensure that the remains found in the site are interred in a cemetery.
- Charges (2) No owner of a cemetery interring human remains for an owner of land to whom this section applies may charge more than the prescribed amount for the interment.
- War Graves **75.**—(1) No person shall alter or move the remains or marker of a Canadian or Allied veteran or a Commonwealth War Burial without the agreement of the Department of Veterans Affairs (Federal), the Commonwealth War Graves Commission or such other persons and associations as are prescribed.
- Idem (2) Subsection (1) applies only if the Department of Veterans Affairs (Federal) contributed to the cost of the interment.
- Idem (3) If an agreement is not reached, the person who wants to make the alteration or move may apply to the Registrar for directions.
- Idem (4) When an application is made under subsection (3), the Registrar shall instruct the applicant to give notice of the application to such persons and associations as the Registrar considers may have an interest in the matter.
- Idem (5) All persons and associations receiving a notice under subsection (4) may make submissions on the matter to the Registrar in such form and manner as the Registrar instructs.

(6) After considering all submissions made, the Registrar <sup>Idem</sup> shall direct the applicant on the manner of dealing with the remains or marker in question.

(7) Subsection (1) does not apply to a person altering or <sup>Idem</sup> moving remains or markers in accordance with the direction of the Registrar.

**76.**—(1) The Lieutenant Governor in Council may make <sup>Regulations</sup> regulations,

1. prescribing documents, information and notices to be provided in the course of an application;
2. prescribing fees and requiring the payment of fees;
3. providing for the manner in which a deposit required for approval shall be applied or returned;
4. prescribing classes of cemeteries;
5. prescribing, for any notice required to be given under this Act, the type of notice and the manner in which it is to be given;
6. prescribing requirements and standards for the placing and spacing of interments, markers, fixtures, fences or other structures in a cemetery;
7. prescribing the minimum depth of coverage for in-ground burials;
8. prescribing the drains, sewers and other structures for the flow of water required in a cemetery;
9. governing mausolea, columbaria and other structures on or in a cemetery and establishing construction standards;
10. prescribing classes and types of licences;
11. governing the issue of licences and providing for the renewal of licences;
12. governing the term during which each class or type of licence is valid;
13. prescribing conditions that attach to any class or type of licence;

14. providing for posting of bonds and prescribing the amounts thereof;
15. providing for the forfeiture of posted bonds and for the distribution of the proceeds of forfeited bonds;
16. prescribing practices or actions that are evidence of incompetence or lack of honesty and integrity;
17. requiring the approval of the Registrar for promotional and sales material and prescribing the criteria for approval;
18. prescribing the type of promotional and sales material that requires the approval of the Registrar and providing for its submission to the Registrar;
19. governing and prohibiting the use of any promotional or sales material or any practice;
20. prescribing records and information to be kept by licensees;
21. providing for and requiring the submission of records and information and providing for access by agents of the Registrar to records and information;
22. prescribing the form of and conditions to be included in contracts for the sale of interment rights and cemetery supplies and services;
23. prescribing the information to be supplied to purchasers of interment rights and cemetery supplies and services;
24. prescribing the form of and information to be included in certificates of interment rights;
25. prescribing information to be provided to the public, any person or any class of persons and prescribing the manner of providing that information;
26. governing advertising and the manner of soliciting business;
27. requiring the use of any prescribed forms;
28. providing for and requiring the submission of records and information and providing for access by agents of the Registrar to records and information;

29. governing the use of contracts and certificates;
30. governing the uses to which owners may apply income from Care and Maintenance Funds;
31. prescribing records and information on trust funds to be provided to purchasers of interment rights and pre-need supplies or services;
32. governing the establishment, maintenance and operation of trust funds including the Care and Maintenance Fund and the Pre-need Assurance Fund;
33. governing the payment of money into and out of trust funds including the time within which and the circumstance under which payments are to be made;
34. prescribing fees that may be retained by trustees in respect of any type of trust fund;
35. governing the interment, disinterment, disposition and removal of human remains;
36. governing the preparation of disinterred human remains for transportation including prescribing the design and material of container to be used;
37. prescribing standards for the construction and installation of markers and other cemetery supplies and requiring compliance with the standards;
38. governing the standards of care and maintenance required for a cemetery;
39. governing the procedure for approving by-laws made by owners and for revoking any by-laws made by owners;
40. prescribing the criteria that the Registrar shall use in approving by-laws;
41. governing the manner of conducting cremations and dealing with cremated remains;
42. prescribing amounts to be deposited, in trust, to compensate for disposing of cremated remains and regulating the handling of the trust moneys;



43. governing the location and ownership of cemeteries and crematoria;
44. governing prices and the range of prices that may be included on price lists filed with the Registrar by owners;
45. prescribing procedures to be followed in dealing with burial sites and requiring that they be followed;
46. governing arbitration in the absence of a site disposition agreement and requiring compliance with prescribed procedure;
47. prescribing the subject-matters to be contained in a site disposition agreement or arbitration settlement and requiring their inclusion;
48. exempting any person or class of persons, any cemetery or class of cemetery or any thing or class of thing from any provision of this Act or the regulations;
49. prescribing conditions subsequent or precedent for a prescribed exemption and providing that an exemption may be subject to the Registrar being satisfied that it is not contrary to the public interest;
50. prescribing what constitutes notice in any provision where notice is required to be given;
51. governing the time for giving any notice for which a time is not set out in this Act and delegating to the Registrar power to extend any prescribed time;
52. prescribing any thing that is referred to in this Act as being prescribed.

Limitation

(2) Any regulation may be general or specific or of limited application.

Interfering  
with  
cemetery

**77.** No person shall cause or commit a nuisance in a cemetery or wilfully and unlawfully disturb persons assembled for the purpose of interring human remains in a cemetery.

Cause of  
action

**78.**—(1) Any person who, in a cemetery, damages or moves any tree, plant, marker, fence, structure or other thing usually erected, planted or placed in a cemetery is liable to

the cemetery owner and any interment rights holder who, as a result, incurs damage.

(2) In an action under subsection (1), the amount of damages shall be the amount required to restore the cemetery to the state that it was in before any thing was damaged or moved by the person liable. Idem

(3) Any person collecting damages under this section shall use the full amount collected to restore the cemetery. Idem

**79.—**(1) Every person who, Offence

(a) furnishes false, misleading or incomplete information in an application under this Act or in a statement or return required to be furnished under this Act or the regulations;

(b) fails to comply with an order made under this Act; or

(c) contravenes any provision of this Act or the regulations,

is guilty of an offence.

(2) Every director or officer of a corporation who concurs in an offence under this Act is guilty of an offence. Idem

(3) An individual who is convicted of an offence under this Act is liable to a fine of not more than \$20,000 and, on a subsequent conviction, to a fine of not more than \$20,000 and to imprisonment for a term of not more than one year. Idem

(4) A corporation that is convicted of an offence under this Act is liable to a fine of not more than \$40,000. Idem

(5) Subject to subsection (6), no proceeding under this section shall be commenced more than two years after the offence was committed. Limitation

(6) No proceeding under clause (1) (a) or subsection 35 (2) or 36 (3) shall be commenced more than one year after the facts upon which the proceeding is based first came to the knowledge of the Registrar. Idem

(7) If a person is convicted of an offence under this Act, the court making the conviction may, in addition to any other penalty, order the person convicted to make compensation or restitution in relation thereto. Restitution

Certificate as  
evidence

**80.** A statement as to,

- (a) the consent or lack of consent to establish, alter or increase the capacity of a cemetery or crematorium;
- (b) the licensing or non-licensing of any person;
- (c) the filing or non-filing of any document or material required or permitted to be filed with the Registrar;
- (d) the time when the facts upon which proceedings are based first came to the knowledge of the Registrar; or
- (e) any other matter pertaining to licensing, non-licensing, filing or non-filing,

purporting to be certified by the Registrar is, without proof of the office or signature of the Registrar, admissible in evidence in any proceeding, in the absence of evidence to the contrary, of the facts stated therein.

Municipal  
powers

**81.—**(1) A municipality may expropriate,

- (a) a cemetery or part thereof, whether the cemetery exists within or outside the municipality; and
- (b) land on which to establish or enlarge a cemetery.

Idem

(2) The council of a municipality may pass by-laws authorizing,

- (a) the purchase of a cemetery or part thereof that is situated within the municipality;
- (b) the acquisition of land within the municipality or in an adjacent township or unorganized territory for a cemetery or for the enlargement of an existing cemetery owned by the municipality; or
- (c) the sale, transfer or lease of a cemetery or part thereof.

Tribunal

**82.—**(1) If there is an appeal under this Act to the Tribunal, it shall appoint a time for and hold a hearing.

Order

(2) After holding a hearing, the Tribunal may by order direct the Registrar to take an intended action or to refrain from taking an action or to take such action as the Tribunal considers that the Registrar ought to take and for such pur-

poses the Tribunal may substitute its opinion for that of the Registrar.

(3) The Tribunal may attach such conditions to its order or to the licence as it considers proper to give effect to the purposes of this Act. Conditions

(4) The Registrar, the applicant or licensee who has required the hearing and such other persons as the Tribunal may specify are parties to proceedings before the Tribunal under this Act. Parties

**83.**—(1) A notice, order or other document under this Act or the regulations is sufficiently given, served or delivered if delivered personally or sent by first class mail addressed to the person to whom it is to be given, served or delivered at that person's last known address. Service

(2) A notice, order or other document sent by first class mail in accordance with subsection (1) shall be deemed to be given, served or delivered on the fifth day after the day of mailing, unless the person to whom it is sent establishes that the notice, order or other document was not received until a later date because of absence, accident, illness or other cause beyond that person's control. Idem

**84.** Despite the fact that a licensee appeals from an order of the Tribunal under section 11 of the *Ministry of Consumer and Commercial Relations Act*, the order takes effect immediately but the Tribunal may grant a stay until the disposition of the appeal. Stay  
R.S.O. 1980,  
c. 274

**85.** The Registrar may, at any time, cancel a licence upon the written request of the licensee and the surrender of the licence by the licensee. Surrender of  
licence

**86.**—(1) An approval given under the *Cemeteries Act*, being chapter 59 of the Revised Statutes of Ontario, 1980, shall be deemed to be a consent given under this Act. Transition

(2) Every person who is an owner on the day this Act comes into force shall be deemed to be licensed under this Act to own the cemetery or crematorium. Idem

(3) Every person who was employed as a sales representative selling interment rights, cemetery supplies or cemetery services on the day this Act comes into force shall be deemed to be licensed as a sales representative under this Act representing the owner employing that person. Idem



- Idem (4) Subject to subsection (5), subsections (2) and (3) cease to apply one year after this Act comes into force.
- Idem (5) If a person who is deemed, under subsection (2) or (3), to be licensed under this Act applies for a comparable licence under this Act within one year after this Act comes into force, the deemed licence remains in force until the application is finally disposed of.
- Idem (6) Funds set up under the *Cemeteries Act*, being chapter 59 of the Revised Statutes of Ontario, 1980, for,
- (a) perpetual care shall be deemed to be a Care and Maintenance Fund; and
  - (b) pre-need supplies or services shall be deemed to be a Pre-need Assurance Fund.
- Act prevails **87.** This Act prevails over the *Ontario Heritage Act*, being chapter 337 of the Revised Statutes of Ontario, 1980.
- 88.** Section 1 of *The Toronto General Burying Grounds Act, 1977*, being chapter 110, is repealed and the following substituted therefor:
- Power to acquire land **1.** The Trustees of the Toronto General Burying Grounds may, in addition to its existing powers to acquire and hold land, acquire and hold land and may exercise all its corporate powers with reference thereto.
- Repeal **89.** The *Cemeteries Act*, being chapter 59 of the Revised Statutes of Ontario, 1980, is repealed.
- Commence-ment **90.** This Act comes into force on a day to be named by proclamation of the Lieutenant Governor.
- Short title **91.** The short title of this Act is the *Cemeteries Act, 1989*.

# Bill 31

## An Act to revise the Cemeteries Act

The Hon. G. Sorbara

*Minister of Consumer and Commercial Relations*



*1st Reading*      June 12th, 1989

*2nd Reading*     June 21st, 1989

*3rd Reading*

*Royal Assent*

*(Reprinted as amended by the Resources Development Committee)*

## EXPLANATORY NOTES

The Bill revises the existing *Cemeteries Act*.

The purpose of the Bill is to regulate the establishment and management of cemeteries and crematoria and to provide a larger measure of consumer protection. The main features of the Bill are:

1. Appointment of a Registrar to administer the Act.
2. Municipal control of the establishment, alteration and enlargement of cemeteries and crematoria, with appeal of municipal decisions to the Ontario Municipal Board.
3. Providing for the licensing of owners of cemeteries and crematoria and of sales representatives.
4. Provisions govern contracts for the sale of interment rights, supplies and services by owners of cemeteries and crematoria, providing information disclosure and rights of cancellation for pre-need purchases.
5. Telephone and door-to-door solicitation for the sale of interment rights, cemetery supplies and services is prohibited.
6. Provisions are made to protect unmarked burial sites, resolve their status and settle disputes regarding their disposition.
7. Provisions regarding Care and Maintenance Trust Funds (formerly Perpetual Care) are expanded to apply to monuments.
8. Provisions governing cemetery abandonment are streamlined, giving municipalities full title to abandoned sites and associated trust funds.

**Bill 31****1989****An Act to revise the Cemeteries Act**

HER MAJESTY, by and with the advice and consent of the Legislative Assembly of the Province of Ontario, enacts as follows:

**1. In this Act,**

Definitions

“burial site” means land containing human remains that has not been approved or consented to as a cemetery in accordance with this Act or a predecessor of this Act;

“by-laws”, when used in relation to a cemetery, means the rules under which a cemetery or crematorium is operated;

“cemetery” means land set aside to be used for the interment of human remains and includes a mausoleum, columbarium or other structure intended for the interment of human remains;

“cemetery services” means,

(a) in respect of a lot,

(i) opening and closing of a grave,

(ii) interring or disinterring human remains,

(iii) providing temporary storage in a receiving vault,

(iv) construction of a foundation for a marker,

(v) setting of corner posts,

(vi) providing,

(A) a tent or canopy,

(B) carrying and lowering devices, and



- (C) ground cover,
  - for an interment service, and
  - (vii) preparing flower beds and planting flowers and shrubs,
- (b) in respect of a crypt or compartment in a mausoleum,
  - (i) opening, closing and sealing of the crypt or compartment,
  - (ii) providing temporary storage in a vault or crypt,
  - (iii) providing a tent or canopy for an interment service, and
  - (iv) providing elevating devices,
- (c) in respect of a niche or compartment in a columbarium,
  - (i) opening, closing and sealing of the niche or compartment, and
  - (ii) providing a tent or canopy for an interment service,
- (d) in respect of a crematorium, all services provided by the owner of the crematorium at the crematorium, and
- (e) in respect of a cemetery, such other services as are provided by the owner of the cemetery at the cemetery;

“cemetery supplies” includes interment vaults, markers, flowers, liners, urns, shrubs and artificial wreaths and other articles intended to be placed in a cemetery;

“columbarium” means a structure designed for the purpose of interring cremated human remains in sealed compartments;

“commercial cemetery” means a cemetery operated for the purpose of making a profit for the owner;

“crematorium” means a building fitted with appliances for the purpose of cremating human remains and includes everything incidental and ancillary thereto;

“Director” means a Director appointed under the *Ministry of Consumer and Commercial Relations Act*; R.S.O. 1980,  
c. 274

“equity share” means a share of a class of shares that carries a voting right either under all circumstances or under some circumstances that have occurred and are continuing;

“human remains” means a dead human body and includes a cremated human body;

“income” means the interest or money earned, including the compounding thereof, by the investment of funds;

“inter” means the burial of human remains and includes the placing of human remains in a lot;

“interment rights” includes the right to require or direct the interment of human remains in a lot;

“interment rights holder” means a person with interment rights with respect to a lot and includes a purchaser of interment rights under the *Cemeteries Act*, being chapter 59 of the Revised Statutes of Ontario, 1980, or a predecessor of that Act;

“land registry office” means the land registry office or the land titles office in the area in which a cemetery is located;

“lot” means an area of land in a cemetery containing, or set aside to contain, human remains and includes a tomb, crypt or compartment in a mausoleum and a niche or compartment in a columbarium;

“marker” means any monument, tombstone, plaque, headstone, cornerstone, or other structure or ornament affixed to or intended to be affixed to a burial lot, mausoleum crypt, columbarium niche or other structure or place intended for the deposit of human remains;

“mausoleum” means a building or structure, other than a columbarium, used as a place for the interment of the human remains in sealed crypts or compartments;

“Minister” means the Minister of Consumer and Commercial Relations;

“municipality” means the corporation or other entity having municipal jurisdiction in the area in which a cemetery is located and includes a police village, city, town, village, township or improvement district or the council thereof;

“owner” means an owner of a cemetery or a crematorium;

“person” includes a board of trustees, local council of a municipality or other organization or group of persons organized for the purpose of operating or managing a cemetery;

“plot” means two or more lots in which the rights to inter have been sold as a unit;

“pre-need supplies or services” means cemetery supplies or services that are not required to be provided until the death of a person alive at the time the arrangements are made;

“prescribed” means prescribed by the regulations made under this Act;

“Registrar” means the Registrar appointed under this Act;

“sales representative” means,

- (a) a person who sells or offers for sale interment rights or cemetery supplies or services on behalf of a commercial cemetery, or
- (b) a person whose primary employment is selling interment rights or cemetery supplies or services;

“Tribunal” means The Commercial Registration Appeal Tribunal;

“trust fund” means a trust fund established for the purpose of this Act.

#### CONSENT TO ESTABLISH CEMETERY OR CREMATORIUM

Consent for  
cemetery,  
etc.

**2.** No person shall establish, alter or increase the capacity of a cemetery or crematorium without the consent of the Registrar.

Application  
for consent

**3.—(1)** An applicant for consent shall apply to the Registrar and,

- (a) pay the prescribed fee;

- (b) submit the prescribed documents showing the layout of the cemetery and the location of existing or proposed plots, lots, structures and fixtures; and
- (c) if the applicant is the owner of a commercial cemetery or a cemetery of a class prescribed for the purpose of this clause, pay a deposit in a prescribed amount into a Care and Maintenance Fund.

(2) If the cemetery or crematorium is proposed to be established or already exists in an area with municipal organization, the applicant, before applying for the consent of the Registrar, must obtain the approval to the proposal of the appropriate municipality. Approval required

(3) If the cemetery or crematorium is to be established or enlarged to encroach on land, in an area without municipal organization, that is Crown land at the time of the application for consent, the applicant, before applying for the consent of the Registrar, must obtain the approval to the proposal of the Minister of Natural Resources. Idem

**4.** A municipality that receives a request for an approval required by subsection 3 (2) may hold public hearings to determine if the approval is in the public interest. Public hearings

**5.—(1)** A municipality, upon receiving a request for approval, shall give or refuse to give the approval within a reasonable time after receiving the request. Decision

(2) In considering a request for an approval, the principal factor shall be the public interest. Public interest

(3) A municipality shall, upon arriving at a decision on an application, Notice of decision

(a) send a copy of the decision together with the reasons for it to the Registrar and to the applicant; and

(b) publish notice of the decision in a local newspaper.

(4) The applicant, Registrar or any person with an interest therein may, within fifteen days after publication of the notice of the decision, refer the decision of a municipality to the Ontario Municipal Board for a hearing. Appeal

(5) Despite subsection (4), if an applicant or the Registrar does not receive a copy of a decision until after the decision is published, the fifteen days referred to in subsection (4) apply Idem



after the applicant or Registrar, as the case may be, receives the copy.

Representation

(6) The Registrar is entitled to make representations to the Ontario Municipal Board in any appeal under subsection (4).

Board decision

**6.—**(1) The Ontario Municipal Board may reverse the decision appealed from and substitute its own decision.

Idem

(2) A decision of the Board that is substituted under subsection (1) shall be deemed to be the decision of the municipality.

Certificate of consent

**7.—**(1) The Registrar shall give a certificate of consent to the establishment, alteration or increase in the capacity of a cemetery or crematorium, as the case may be, if,

- (a) the applicant has the approval of the municipality or the Minister of Natural Resources;
- (b) the applicant is licensed to own that cemetery and is and will be on the granting of the licence in compliance with the requirements of this Act and the regulations and the laws intended for the protection of the environment and of health; and
- (c) where neither approval referred to in clause (a) is required, the Registrar is satisfied that the consent is in the public interest.

Notice of refusal to issue

(2) The Registrar, on refusing to give a certificate of consent, shall advise the applicant, in writing, of,

- (a) the reason for the refusal; and
- (b) the applicant's right to appeal.

Appeal

(3) An applicant who receives a notice under subsection (2) may appeal to the Tribunal within fifteen days after receiving the notice.

Order by Tribunal

(4) If the Tribunal finds that the applicant is in compliance with clauses (1) (a) and (b) or that giving the consent is in the public interest, as the case may be, the Tribunal shall order the Registrar to issue the certificate of consent applied for or a consent in a modified version.

Idem

(5) Upon receiving an order under subsection (4), the Registrar shall issue the certificate as ordered.

(6) A certificate of consent shall contain a sufficient description of the cemetery or crematorium so that the certificate may be registered in the appropriate land registry office. Registration

(7) Upon registration of a certificate of consent, the land described therein becomes a cemetery. Effect of registration

#### CLOSING CEMETERY

**8.—**(1) In this section and in sections 9, 10, 11, 12 and 13, a reference to a cemetery includes any part of a cemetery. Closing cemetery

(2) The Registrar may order a cemetery closed if the closing is in the public interest. Idem

(3) An order shall not be made under subsection (2) until, Notice

(a) notice of the intention to make the order is given in the manner and to the persons prescribed; and

(b) interested persons are given the opportunity to make submissions to the Registrar within such time as is prescribed.

(4) Notice is not required if, Idem

(a) the request is from the owner;

(b) no interments have been made in the cemetery to be closed; and

(c) the consent of all affected interment rights holders has been obtained.

**9.—**(1) In an order to close a cemetery, the Registrar may, Order

(a) declare a cemetery or a portion thereof closed;

(b) require the owner to disinter all human remains therein and specify the manner of disinterment and the manner and place of reintering or dealing with the remains;

(c) require the owner to remove any markers and relocate them to a specified place; and

(d) require the owner to provide or acquire equivalent interment rights for all holders of interment rights with respect to unused lots in the cemetery.

- Substitution (2) In an order to close a cemetery, the Registrar may designate another person to do anything that the owner may be required to do.
- Notice (3) The Registrar shall give every person who made a submission notice of the order and at the same time advise the person of the right of appeal.
- Coming into force (4) Subject to subsection (5), an order to close a cemetery comes into force thirty days after it is made unless there is an appeal filed before the order comes into force or the order sets out a later date.
- Idem (5) If submissions were made in respect of the order, the order comes into force thirty days after notice has been given to each person who made a submission unless there is an appeal filed before the order comes into force or the order sets out a later date.
- Idem (6) An order that is appealed comes into force upon being upheld by the Tribunal.
- Appeal **10.** A person with an interest therein may appeal, to the Tribunal,
- (a) an order to close a cemetery any time before the order comes into force; or
  - (b) a refusal to order a cemetery closed.
- Certificate **11.—**(1) The Registrar, upon being satisfied that the requirements in an order to close a cemetery have been complied with, shall issue a certificate, with a legal description of the land involved, that the cemetery is closed.
- Idem (2) Despite subsection (1), an applicant therefor is entitled to a certificate that a cemetery is closed if the cemetery had been closed by the Lieutenant Governor in Council but a certificate issued under subsection 59 (7) of the *Cemeteries Act*, being chapter 59 of the Revised Statutes of Ontario, 1980, or a predecessor of that subsection has not been registered.
- Registration (3) A certificate issued under this section may be registered in the appropriate land registry office.
- Effect of registration (4) Upon registration of a certificate of closing, the land described therein ceases to be a cemetery.
- Maintenance fund **12.—**(1) Where any money has been paid into a care and maintenance fund with respect to a cemetery that is to be

closed, the Registrar shall direct that money to be transferred to the trustee of the fund maintained by the owner of the cemetery into which the human remains are to be reinterred or where the interment rights are to be exercised.

(2) The amount transferred under subsection (1) is a credit against the amount required to be paid into the fund by the owner of the cemetery into which the human remains are to be reinterred or where the interment rights are to be exercised. Idem

**13.** Where any money has been paid into a pre-need assurance fund with respect to interment rights in a cemetery that is to be closed, the Registrar shall direct that money to be paid to the trustee of the fund maintained by the owner of the cemetery where alternative interment rights have been made available for the holders of interment rights in the cemetery to be closed. Pre-need assurance fund

#### LICENCES

**14.** No person shall own a cemetery or crematorium unless licensed under this Act to own that cemetery or crematorium. Licence required

**15.—(1)** A person may apply to the Registrar for a licence to own a cemetery or crematorium. Licence to own

(2) An applicant is entitled to a licence except if, Requirements

- (a) the applicant cannot reasonably be expected to be financially responsible in the operation of a cemetery or crematorium;
- (b) the past or present conduct of the persons referred to in subsection (3) affords reasonable grounds for belief that the applicant will not operate in accordance with the law and with integrity and honesty;
- (c) the applicant or managing employees of the applicant do not have the experience and competence required to manage the cemetery or crematorium in accordance with the law;
- (d) the applicant is carrying on activities that are, or will be if the applicant is licensed, in contravention of this Act or the regulations;
- (e) the applicant will, if licensed, be carrying on activities under this Act that are in contravention of another Act or a municipal by-law;



- (f) the applicant is unable to provide the resources and facilities required to manage a cemetery or crematorium; or
- (g) the applicant or an employee or agent of the applicant has made a false statement or provided false information in an application for a licence.



Idem

(3) Clause (2) (b) applies to the following persons:

1. The applicant.
2. An officer or director of the applicant.
3. A person holding more than 10 per cent of the equity shares of the applicant or an officer or director of such person.
4. Any person having a beneficial interest in the operation of the business of the applicant or licensee.



Issue of licence

(4) The Registrar shall issue a licence to own an identified cemetery or crematorium to an applicant therefor who pays the prescribed fee, complies with the regulations and is not disentitled under subsection (2).

Conditions attaching to licence

(5) A licence is subject to such conditions as may be consented to by the applicant, imposed by the Tribunal or prescribed.

Notice

(6) If the Registrar intends to refuse to issue a licence, the Registrar shall give the applicant notice of and reasons for the intention and, at the same time, advise the applicant of the right to appeal.

Appeal

(7) An applicant who receives a notice under subsection (6) may appeal the intended refusal to the Tribunal within fifteen days after receiving the notice.

Refusal to issue licence

(8) If no appeal is filed under subsection (7), the Registrar may refuse to issue the licence applied for.

Revocation of owner's licence

**16.—**(1) The Registrar may revoke or refuse to renew a licence to own a cemetery or a crematorium if,

- (a) the conduct or situation of the licensee is such as to disentitle the licensee from being granted a licence;

- (b) where the licensee is a corporation, the shareholders of the corporation have changed in the manner and to the extent prescribed; or
- (c) the Registrar has reasonable and probable grounds to believe that the continued operation of the cemetery or crematorium by the licensee,
  - (i) creates a risk to public health, safety or decency, or
  - (ii) will result in a financial loss by members of the public because provisions of this Act or the regulations are not being complied with.

(2) If the Registrar intends to revoke or to refuse to renew a licence, the Registrar shall give the licensee notice of and reasons for the intention and, at the same time, advise the licensee of the right to appeal. Notice

(3) Any licensee who receives a notice under subsection (2) may appeal the intended revocation or refusal to the Tribunal within fifteen days after receiving the notice. Appeal

(4) If an appeal has been filed under subsection (3), the Registrar shall not revoke the licence unless the Tribunal determines that the licence should be revoked. Delay

(5) If no appeal is filed under subsection (3), the Registrar may revoke the licence after the time for appeal has expired. Where no appeal

(6) Section 14 does not apply to an owner whose licence is revoked so long as the Registrar is satisfied that the owner is making reasonable efforts to sell the cemetery or crematorium. Exception to licensing requirement

**17.—**(1) The Director may appoint a manager to operate a cemetery or crematorium in the place of the owner if, Appointment of manager

- (a) the Director has reasonable and probable grounds, based on a statement under oath, to believe that the owner is doing or is about to do something in the operation of the cemetery or crematorium that,
  - (i) creates or is likely to create a risk to public health, safety or decency, or
  - (ii) is causing or is likely to cause financial loss to members of the public; or

(b) the owner's licence is revoked.

Powers of  
manager

(2) A manager appointed under subsection (1) has all the powers of the owner with respect to the operation of the cemetery or crematorium including the power to exclude the owner and, if the owner is a corporation, the directors or officers of the corporation, from the premises of the business.

Effect of  
appointment

(3) From the appointment of a manager under subsection (1) until the appointment is cancelled, the owner being replaced does not have the authority to deal with any assets or trust funds relating to the cemetery or crematorium and shall not be involved in the operation of the cemetery or crematorium.

Appeal

(4) Any person affected by an appointment of a manager may apply to a judge of the Supreme Court for an order cancelling the appointment and the order may include such directions and conditions as seem appropriate.

Selling  
interment  
rights

**18.**—(1) No person shall sell interment rights unless that person does so as an agent acting on behalf of a licensed owner.

Selling  
supplies, etc.

(2) No person shall act as a sales representative on behalf of an owner unless that person is licensed as a sales representative and represents an owner specified in the sales representative's licence.

Exception for  
owners

(3) Subsections (1) and (2) do not apply to preclude a person licensed as an owner from selling rights, services or supplies to be used in or provided at a cemetery or crematorium owned by that person.

Licence to  
sell

**19.**—(1) An individual may apply to the Registrar for a licence to act as a sales representative on behalf of an owner.

Requirements  
for licence

(2) An applicant is entitled to a licence except if,

- (a) the past or present conduct of the applicant affords reasonable and probable grounds for believing that the applicant will not carry on business in accordance with the law and with integrity and honesty;
- (b) the applicant, in receiving the licence, would be in a position of apparent conflict of interest;
- (c) the applicant does not have a position with a licensed owner or a commitment to be hired by a licensed owner upon receiving a licence; or

- (d) the applicant has made a false statement or provided false information in an application for a licence.

(3) A conviction for an offence that involves misrepresentation or a lack of integrity or honesty is evidence, in the absence of evidence to the contrary, that the person convicted will not carry on business in accordance with the law and with integrity and honesty within the meaning of clause (2) (a). Past conduct

(4) An applicant's intention to work for more than one owner is evidence, in the absence of evidence to the contrary, of an apparent conflict of interest. Conflict of interest

(5) The Registrar shall issue a licence to act as a sales representative to every applicant therefor who pays the prescribed fee, complies with the regulations and is not disentitled under subsection (2). Issue of licence

(6) A licence is subject to such conditions as may be consented to by the licensee, imposed by the Tribunal or prescribed. Conditions attaching to licence

(7) If the Registrar intends to refuse to issue a licence, the Registrar shall give the applicant notice of and reasons for the intention and, at the same time, advise the applicant of the right to appeal. Notice

(8) An applicant who receives a notice under subsection (7) may appeal the intended refusal to the Tribunal within fifteen days after receiving the notice. Appeal

(9) If no appeal is filed under subsection (8), the Registrar may refuse to issue the licence. Refusal to issue licence

**20.—**(1) The Registrar may revoke, suspend or refuse to renew a sales representative's licence if the conduct or situation of the licensee is such as to disentitle the licensee from being granted a licence. Revoking, suspending or refusing to renew sales licence

(2) If the Registrar intends to revoke, suspend or refuse to renew a licence, the Registrar shall give the licensee notice of and reasons for the intention and, at the same time, advise the licensee of the right to appeal. Notice

(3) If there are grounds to suspend a licence and the Registrar considers it to be in the public interest that the licence be suspended immediately, the Registrar may, by order, suspend a sales representative's licence with the order taking effect when it is made. Immediate suspension



Idem (4) An immediate suspension expires fifteen days after it is appealed to the Tribunal unless, before the fifteen days expire, the Tribunal extends the suspension.

Appeal (5) Any licensee who receives a notice under subsection (2) may appeal the intended revocation or suspension to the Tribunal within fifteen days after receiving the notice.

Idem (6) Any licensee whose licence is suspended under subsection (3) may appeal the suspension to the Tribunal.

Delay (7) If an appeal has been filed under subsection (5), the Registrar shall not revoke or suspend the licence unless the Tribunal determines that the licence should be revoked or suspended.

Where no appeal (8) If no appeal is filed under subsection (5), the Registrar may revoke or suspend the licence after the time for appeal has expired.

Application **21.—**(1) A person who is refused a licence or a renewal of a licence under this Act may apply for a licence only after one year has passed since the refusal.

Idem (2) A person whose licence is revoked under this Act may apply for a licence only after one year has passed since the revocation.

Continuation **22.** The licence of a licensee who has applied for a renewal of the licence continues until,

(a) the renewal is granted; or

(b) if the licensee is served with a notice that the Registrar intends to refuse to renew, the time for appeal has expired or, if an appeal is required, the matter has been finally determined.

#### CONSUMER PROTECTION

Interment rights **23.—**(1) An interment rights holder may require, by written demand, the owner to repurchase the rights at any time before they are used.

Idem (2) Every owner who receives a demand made under subsection (1) shall repurchase the interment rights within thirty days after receiving the demand.

Idem (3) The repurchase price of interment rights shall be determined in the prescribed manner.

(4) An interment rights holder or the personal representative of the holder has the right to inter any human remains in a lot or other facility approved under this Act in accordance with the by-laws governing the facility. Idem

(5) An interment rights holder or the personal representative of the holder may erect a commemorative marker on a lot or other receptacle for human remains if the erection of the marker is not in contravention of the by-laws governing the facility. Idem

(6) Every person has the right to reasonable access to a lot at any time except as prohibited by the by-laws governing the facility. Idem

(7) An interment rights holder and the relatives of any person whose remains are interred in a cemetery have the right to decorate the appropriate lot if the decoration is not in contravention of the by-laws governing the facility. Idem

(8) Subsection (1) does not apply to require repurchase of interment rights in a plot in which any interment rights have been exercised. Exception

**24.—**(1) A purchaser of pre-need supplies or services from an owner may cancel, by written notice to the owner, the contract to purchase at any time before the services or the supplies are provided or if the owner contravenes subsection (5). Pre-need  
services or  
supplies

(2) Subsection (1) or (5) does not apply if the supplies or services are provided within thirty days after the contract is made because of the death of the person for whom the supplies or services were contracted. Idem

(3) Subject to subsection (4), an owner who receives a notice that a contract is cancelled under this section shall refund to the purchaser all money, together with all income thereon, received under the contract within thirty days after receiving the notice. Idem

(4) An owner to whom this section applies may retain a service fee determined in the prescribed manner unless the contract is cancelled within thirty days after it is made. Idem

(5) No owner shall provide pre-need supplies or services under a contract within the thirty-day period immediately following the day the contract is made. Prohibition

Application (6) This section applies to contracts for pre-need supplies or services whether the contracts were made before or after this section comes into force.

Contract requirements **25.**—(1) A contract for the purchase of interment rights or cemetery supplies or services is not enforceable by an owner unless,

- (a) it is written, signed by both parties and complies with the regulations;
- (b) it sets out the purchaser's cancellation rights under this Act and whether or not cemetery supplies or services are to be provided before the death of the person for whom they are contracted;
- (c) the owner complies with subsections (2) and (3); and
- (d) the owner delivers a signed copy of the contract to the purchaser at the time the contract is made.

Idem (2) An owner who sells interment rights must deliver to the purchaser at the time the contract is made a copy of the by-laws of the cemetery and a certificate of interment rights.

Idem (3) An owner who sells pre-need supplies or services must set out in the contract exactly what the supplies or services are and the price charged for them.

Refund with interest (4) An owner who receives money under a contract that is not enforceable because of the application of this section shall refund to the purchaser, immediately upon written demand, with interest at the prescribed rate, all money received.

Idem (5) Subsection (4) applies even though the owner has paid the money into a trust fund that is not accessible to the owner.

Exception (6) Subsection (4) does not apply, in the case of interment rights, after the rights are used or, in the case of cemetery supplies or services, after the supplies or services are provided.

Public information **26.** Every owner shall make such information as is prescribed available to the public in the manner and form prescribed.

Price list **27.**—(1) Every owner shall file with the Registrar a price list of all interment rights and cemetery services and supplies

that may be sold and all charges that may be made by that owner.

(2) No owner shall charge or collect or receive money for interment rights or cemetery supplies or services that is more than the price for the rights, supplies or services filed by the owner with the Registrar and not disallowed. Idem

(3) The Registrar, upon receiving a price list, may disallow, within thirty days after the list is filed, any price that, in the opinion of the Registrar, is excessive or significantly higher than current market price for the supplies, services or rights within the applicable area. Approval of list

(4) The Registrar shall give immediate written notice to the owner who filed the price list of any price on the list that is disallowed and, in the notice, shall give the reasons for the disallowance. Notice of disallowance

(5) If the Registrar disallows a price on a price list, the owner who filed the list may appeal the disallowance to the Tribunal. Appeal

(6) An owner who has charged any person a price that is disallowed by the Registrar shall pay, forthwith, to that person the difference between the price charged and the price allowed. Repayment

**28.—**(1) If the Registrar believes, on reasonable and probable grounds, that any person licensed under this Act has made a false or misleading public representation or a representation that is in contravention of this Act or the regulations, the Registrar shall order that person to stop making the representation and, in the order, shall set out the reasons for the order. Advertising

(2) A person who receives an order under subsection (1) shall immediately comply with the order and shall refrain from making the representation, in any form, in the future. Compliance with order

(3) Any person who receives an order under subsection (1) may appeal the order to the Tribunal. Appeal

(4) The Tribunal may issue a stay of any order made by the Registrar under subsection (1). Stay of order

**29.—**(1) No person shall contact, in any way, a person in a hospital, nursing home or such other institution as is prescribed for the purpose of suggesting that a contract for the Soliciting prohibited



purchase of interment rights or cemetery supplies or services be made.

Idem (2) No person shall contact, by telephone or in person, a person for the purpose of suggesting that a contract for the purchase of interment rights or cemetery supplies or services be made.

Exception (3) This section does not prohibit any contact made at the request of the person being contacted.

Regulations (4) The Lieutenant Governor in Council may make regulations defining "contract" for the purpose of this section.

Abandoned interment rights **30.**—(1) A cemetery owner may apply to the Registrar for a declaration that interment rights are abandoned.

Idem (2) An application may be made under subsection (1) only in respect of interment rights that had been sold at least twenty years before the application and have not been used.

Inquiry (3) The Registrar, on receiving an application under subsection (1), shall make such inquiry and direct the applicant to give such notices as seem reasonable in the circumstances.

Declaration (4) Upon being satisfied that the rights are abandoned, the Registrar shall issue a declaration to that effect.

Notice (5) The Registrar shall give notice of the declaration or the decision to not make the declaration to the applicant and to every person who has indicated to the Registrar an interest in the matter.

Appeal (6) Any person who has an interest in the matter may appeal the decision of the Registrar to the Tribunal within thirty days after notice of the decision is given under subsection (5).

Right to sell abandoned rights **31.** A cemetery owner may resell interment rights that have been declared abandoned,

(a) if there is no appeal, at the end of the time for appeal; or

(b) if there is an appeal, when the appeal has been finally determined supporting the declaration.

Rights holder's protection **32.**—(1) Any person whose interment rights have been resold after being declared abandoned may apply to the Registrar for redress.

(2) The Registrar, upon receiving an application under subsection (1), shall order the cemetery owner or the owner's successor, as the case may be, to provide, subject to subsection (6), better or equivalent interment rights in that cemetery or to refund an amount determined as prescribed. Idem

(3) Any person whose interment rights have been declared abandoned but have not been resold may apply to the Registrar to have those rights restored. Idem

(4) The Registrar, upon receiving an application under subsection (3), shall order that the declaration be cancelled and that the rights be restored to the person entitled thereto. Idem

(5) This section does not apply in respect of interment rights in cemeteries that are abandoned. Exception

(6) If the cemetery referred to in subsection (2) is one in which interment rights are not available but the owner owns a cemetery in which interment rights are available, the applicant shall be given the option of accepting better or equivalent interment rights in that cemetery. Idem

**33.**—(1) If a marker has been erected on a lot that is the subject-matter of a declaration of abandonment, the cemetery owner shall remove and store it at the owner's expense for at least twenty years. Markers

(2) If an order is made under subsection 32 (2) to provide alternate interment rights, the cemetery owner shall re-erect the marker at the new site at the owner's expense. Idem

(3) If subsection (2) does not apply, the cemetery owner may dispose of the marker at the expiration of the twenty-year period. Idem

**34.**—(1) A cemetery owner who has available space shall provide, upon receiving a written instruction from a welfare administrator, Assisted burials, cemetery

(a) a lot for the interment of the remains of any person referred to in the instruction;

(b) opening and closing services in conjunction with the interment; and

(c) such other related services as are prescribed.

(2) A crematorium owner shall provide, upon receiving a written instruction from a welfare administrator, Crematorium

- (a) a crematorium service for the remains of any person referred to in the instruction; and
- (b) such other related services as are prescribed.

Exception	(3) Subsections (1) and (2) do not apply to require a religious organization to inter or cremate the remains of a person who is disintitled to burial or cremation in a cemetery or crematorium owned by that organization.
Payment	(4) An owner who provides a service under this section is entitled to be paid the prescribed amount for the service by the welfare administrator.
Welfare administrator	(5) The Lieutenant Governor in Council may make regulations defining "welfare administrator" for the purpose of this section and designating persons by title or job description who are considered welfare administrators for this purpose.

#### TRUST FUNDS

Care and maintenance trust funds 1987, c. 33	<b>35.</b> —(1) Every cemetery owner who sells, assigns or transfers interment rights shall establish with a corporation registered under the <i>Loan and Trust Corporations Act, 1987</i> , with that corporation as trustee, a trust fund designated the "Care and Maintenance Fund" for the purpose of providing money for the care and maintenance of the cemetery.
Payments into fund	(2) An owner who is required to establish a fund under this section shall pay into the fund prescribed amounts within the prescribed times.
Payments out of fund	(3) A trustee of a fund established under this section shall pay the income from the fund, after deducting therefrom the trustee's fees, to the owner of the cemetery involved.
Use of money	(4) An owner receiving money pursuant to subsection (3) shall use the money for the upkeep of the cemetery and the markers and structures therein in the prescribed manner.
Capital portion	(5) No trustee of a fund established under this section shall pay out any of the capital portion of the fund.
Idem	(6) Subsection (5) does not apply to preclude a trustee from transferring the fund, with the consent of the Registrar, to another trustee.
Municipal owners	(7) Despite subsection (1), an owner that is a municipality may act as the trustee of a Care and Maintenance Fund established by that municipality.

**36.—**(1) Every owner who sells pre-need cemetery supplies or services shall establish with a corporation registered under the *Loan and Trust Corporations Act, 1987*, with that corporation as trustee, a trust fund designated as the “Pre-need Assurance Fund”.

Pre-need  
assurance  
trust funds  
1987, c. 33

(2) Subsection (1) applies to an owner in respect of sales made by a person that the owner is associated or affiliated with in a manner that is prescribed.

Idem

(3) An owner who is required to establish a fund under this section shall pay into the fund all money received for pre-need supplies or services within the prescribed times.

Payments  
into fund

(4) A trustee of a fund established under this section shall hold all money received for the benefit of the purchaser until that portion of the contract in respect of which the money was paid is completed.

Trust funds

(5) When a portion of a contract is completed, the trustee shall pay to the owner the lesser of,

Idem

(a) the current market price filed with the Registrar for the supplies or services; or

(b) an amount equal to the payments made for the supplies or services together with income accrued on those payments.

(6) If the amount referred to in clause (5) (b) exceeds the price referred to in clause (5) (a), the trustee shall pay the amount of the excess to the owner.

Idem

(7) If a contract in respect of which money is held in the trust fund is cancelled, the trustee shall pay, to the owner, the amount of the initial payments together with income accrued on that amount.

Prior  
cancellation

(8) Subject to subsection 24 (4) (retention of service fee), an owner who receives a payment under subsection (7) shall pay the amount to the purchaser involved within twenty days after receiving the payment.

Payment to  
purchaser

(9) An owner who receives a payment under subsection (6) shall pay the amount to the purchaser or, if an interment has taken place, to the estate of the person interred within twenty days after receiving the payment.

Idem



Municipal  
owners

(10) Despite subsection (1), an owner that is a municipality may act as the trustee of a Pre-need Assurance Fund established by that municipality.

Restrictions  
on trust  
agreements  
R.S.O. 1980,  
c. 512

**37.** No investment of money in a trust established pursuant to this Act shall be made except as permitted under the *Trustee Act*.

Marker  
installation

**38.**—(1) Every person installing a marker in a cemetery shall pay to the cemetery owner the prescribed amount.

Payment into  
fund

(2) An owner receiving money pursuant to subsection (1) shall pay the money into the Care and Maintenance Fund established for that cemetery.

Idem

(3) An owner who does not receive payment under subsection (1) for a marker shall pay into the Care and Maintenance Fund a prescribed amount.

Trust funds  
held by  
owner

**39.**—(1) All money received by an owner that is required to be paid into a trust fund but that is not immediately turned over to a trustee of a trust fund shall be deposited by the owner in a trust account with a credit union or caisse populaire registered under the *Credit Unions and Caisses Populaires Act*, a chartered bank of Canada, the Province of Ontario Savings Office or a trust or loan corporation registered under the *Loan and Trust Corporations Act, 1987*.

R.S.O. 1980,  
c. 102

1987, c. 33

Idem

(2) Money deposited by an owner in a trust account under subsection (1) shall be placed by the owner into a trust fund or otherwise paid out in accordance with this Act or the regulations within the time prescribed.

Providing  
information,  
etc.

**40.**—(1) The Registrar or the Public Trustee may require any owner or trustee to provide,

- (a) any information on trust accounts or trust funds that the owner or trustee is involved with; and
- (b) audited financial statements on any trust account or trust fund relating to a cemetery or crematorium that the owner or trustee is involved with.

Idem

(2) Every owner or trustee who receives a request pursuant to subsection (1) shall forthwith provide all the information or statement required or an explanation as to why it is not possible to provide the information or statement.

Surrogate  
Court

**41.**—(1) The Registrar or the Public Trustee may apply to the Surrogate Court to pass the accounts of any trust fund.

(2) The court, on passing any account, may review and pass upon any agreement made by an owner of a cemetery or crematorium. Idem

(3) The court, on passing any account, may make any order that it considers necessary to ensure that the trust is carried out. Idem

**42.** No cemetery or crematorium owner shall charge or receive any compensation or payment for the effort or expense of establishing or maintaining a trust fund. No compensation to owner

**43.—**(1) Despite subsections 35 (1) and 36 (1), an owner who does not have a practical alternative may require the Public Trustee to act as a trustee for that owner's Care and Maintenance Fund or Pre-need Assurance Fund. Use of Public Trustee

(2) The Registrar and the Public Trustee have an interest in all trust funds. Interested parties

#### CEMETERY AND CREMATORIUM OPERATIONS

**44.—**(1) Every cemetery owner shall maintain, without charge to interment rights holders, the grounds of the cemetery, including all lots, structures and markers, to ensure the safety of the public and to preserve the dignity of the cemetery. Maintenance by cemetery owner

(2) Despite subsection (1), an owner of a non-commercial cemetery may charge interment rights holders, at a rate approved by the Registrar, for the maintenance of lots and markers that were sold before 1955 if there were no trust funds collected for that purpose. Exception

**45.** No owner shall carry on business, in a manner prescribed, in conjunction with a person licensed to operate a funeral establishment or transfer service. Operating with funeral establishment, etc.

**46.** Every cemetery owner shall ensure that all interments in the cemetery are carried out in a decent and orderly manner and that quiet and good order are maintained in the cemetery at all times. Good order

**47.** No person shall inter human remains except in a cemetery that has been consented to by the Registrar and is owned by an owner licensed under this Act. Interment in cemetery only

**48.** If a marker in a cemetery presents a risk to public safety because it is unstable, the owner of the cemetery shall Repairing markers

do whatever is necessary by way of repairing, resetting or laying down the marker so as to remove the risk.

Mortgage on  
cemetery

**49.**—(1) No encumbrance or charge on a cemetery or crematorium is enforceable unless it was given as security for money borrowed for,

- (a) the purpose of improving the facilities provided;
- (b) the purpose of acquiring land for a cemetery or crematorium; or
- (c) a purpose, approved by the Registrar, relating to the operation of the cemetery or crematorium.

Restriction

(2) No encumbrancer claiming an interest in a cemetery or crematorium may deal with the cemetery or crematorium except in accordance with this Act.

By-laws

**50.**—(1) No person shall operate a cemetery or crematorium except in accordance with the by-laws applying to that cemetery or crematorium.

Owner's  
by-laws

(2) An owner of a cemetery or crematorium may make by-laws affecting the operation of the cemetery or crematorium.

When  
effective

(3) No by-law made by an owner is effective until it is filed with and approved by the Registrar.

Prescribed  
by-laws

(4) The Lieutenant Governor in Council may make regulations prescribing by-laws that apply to cemeteries or crematoria or to any prescribed classes of cemeteries or crematoria.

Notice of  
by-laws

(5) An owner filing a by-law shall give such notice as is prescribed to such classes of persons as are prescribed.

Approval by  
Registrar

(6) A by-law filed with the Registrar under this section shall be approved by the Registrar unless the approval is not in the public interest or the effect of the by-law is to give the owner an unreasonable or unfair competitive advantage over another supplier of cemetery services or supplies.

Revocation  
of by-laws

(7) The Registrar may revoke any by-law that the Registrar could have refused to approve under subsection (6).

Idem

(8) Subsection (7) applies even though the Registrar has previously approved the by-law.

Notice of  
disallowance  
or revocation

(9) If the Registrar intends to refuse to approve or revoke a by-law, the Registrar shall give the owner notice of the inten-

tion and, at the same time, advise the owner of the right to appeal.

(10) An owner who receives a notice under subsection (9) may appeal the intended refusal or revocation to the Tribunal within fifteen days after receiving the notice. Appeal

(11) If an appeal is filed against an intended revocation, the Registrar shall not revoke the by-law unless the Tribunal determines that the by-law should be revoked. Delay in revocation

(12) If no appeal is filed against an intended revocation, the Registrar may revoke the by-law after the time for appeal has expired. Where no appeal

**51.**—(1) Subject to subsection (2), no person shall disinter any human remains without, Disinterment

- (a) the prior consent of the interment rights holder; and
- (b) notifying the proper medical officer of health.

(2) Subsection (1) does not apply to a disinterment ordered by, Where consent not required

- (a) a court of competent jurisdiction;
- (b) a coroner appointed under the *Coroners Act*;
- (c) the Attorney General or Solicitor General for Ontario; or
- (d) the Registrar under section 9.

R.S.O. 1980,  
c. 93

(3) For the purpose of clause (1) (a), the consent of the Registrar may be substituted for that of the interment rights holder if, Idem

- (a) the whereabouts of an interment rights holder are not known;
- (b) the interment rights holder is not readily ascertainable; or
- (c) the interment rights holder is not able to consent.

(4) No person shall disinter human remains except in accordance with the regulations. Compliance with regulations



- Exception (5) Clause (1) (b) does not apply to the disinterment of cremated human remains.
- Consent of Registrar **52.**—(1) The Registrar, before consenting to a disinterment, shall consider whether any known person may have an interest in the disposition of the remains and, if there may be such a person, shall order that notice of the intention to disinter be given.
- Notice of intention (2) A notice of intention to disinter shall be given in the manner and form set out in the order.
- Objections (3) Any person objecting to a disinterment may file a written objection with the Registrar at any time before the consent of the Registrar is given.
- Idem (4) If any person files an objection to a disinterment, the Registrar shall determine whether that person has an interest in the remains and, if so, shall ascertain the person's wishes.
- Conditions for consent (5) In giving a consent to a disinterment, the Registrar shall take into account the wishes of any person with an interest in the remains and make the consent subject to such conditions as the Registrar considers appropriate.
- Notice of decision (6) Notice of the Registrar's decision shall be given to the person who applied for the consent, to any person to whom notice is given under subsection (1) and to any person filing an objection.
- Appeal (7) A person receiving a notice under subsection (6) may appeal, to the Tribunal, the Registrar's decision within fifteen days after receiving the notice.
- Delay (8) If an appeal is filed under subsection (7), the Registrar shall not consent to the disinterment unless the Tribunal determines that the disinterment should proceed.
- Where no appeal (9) If no appeal is filed under subsection (6), the Registrar may consent to the disinterment after the time for appeal has expired.
- Attendance by medical officer **53.**—(1) A medical officer of health has the authority to attend at, supervise and direct a disinterment.
- Diseases (2) If a medical officer of health determines that remains are those of a person who died of a communicable disease within the meaning of the *Health Protection and Promotion Act, 1983*, the remains shall not be dealt with in any way except as prescribed by the regulations made under that Act.
- 1983, c. 10

**54.** No person shall remove human remains from a cemetery unless a certificate of a medical officer of health or the cemetery owner confirming that this Act and the regulations have been complied with is affixed to the container. Certificate required

**55.** A burial certificate under the *Vital Statistics Act* is not required to reinter human remains that have been disinterred in accordance with this Act and the regulations. R.S.O. 1980, c. 524, does not apply

**56.—(1)** No person shall cremate human remains except in a crematorium that has been established with the consent of the Registrar and is owned by an owner licensed under this Act. Cremation

(2) No person shall cremate human remains, Prohibitions

(a) for which there is not a coroner's certificate supplied by the Ministry of Consumer and Commercial Relations;

(b) in a container made of, or containing, non-flammable or hazardous material or a prescribed material; or

(c) in which a pacemaker or other prescribed device is implanted.

(3) Except if required by a welfare administrator or for the purpose of compliance with this Act or the regulations made under this Act, a crematorium owner has the right to refuse to cremate any human remains. Right to refuse

**57.** Every crematorium owner shall ensure that all cremations in the crematorium are carried out in a decent and orderly manner and that quiet and good order are maintained in the crematorium at all times. Good order

**58.—(1)** Any person who purchases a cremation service shall deposit, at the request of the crematorium owner, a prescribed amount with the owner to cover the cost of interring the cremated remains. Deposit re disposal

(2) An owner receiving money under subsection (1) shall hold the money in trust. Held in trust

(3) If the cremated remains are claimed by the interment rights holder within one year after the cremation, the owner shall refund the money to the person entitled thereto at the time of the claim. Refund

Owner's  
compensation

(4) If, after one year, the cremated remains have not been claimed and the owner has made reasonable efforts to contact the representatives of the deceased, the owner may inter them and is then entitled to the money held in trust as compensation.

Neglected  
cemetery

**59.**—(1) A municipality may order a cemetery owner who does not keep the cemetery in good order and repair to restore it to good order and repair.

Appeal

(2) An owner may appeal, to the Registrar, an order to restore within fifteen days after receiving the order.

Idem

(3) The Registrar, on receiving an appeal, shall invite submissions from the owner and the municipality and shall make such other inquiries as are appropriate in the circumstances.

Idem

(4) After considering submissions made and the circumstances, the Registrar shall confirm or reverse the order of the municipality or substitute his or her order for that of the municipality.

R.S.O. 1980,  
c. 484  
does not  
apply  
Repairs

(5) The *Statutory Powers Procedure Act* does not apply to an appeal under this section.

(6) If an owner does not restore a cemetery as specified in an order given under subsection (1) within such reasonable time as is set out in the order, the municipality may have the required work done and recover the costs thereof from the owner.

Abandoned  
cemeteries

**60.**—(1) An application to declare a cemetery abandoned may be made to a judge of the District Court if the owner of the cemetery,

- (a) cannot be found or is unknown;
- (b) is unable to maintain it;
- (c) was a corporation that was dissolved; or
- (d) is not licensed as an owner under this Act.

Application

(2) An application to declare a cemetery abandoned may be made by the owner of the cemetery, the municipality or the Registrar.

Notice of  
application

(3) An applicant under subsection (2) must give notice of the application to the other persons referred to in subsection (2).

(4) The municipality is responsible for the cost of an application under this section including the cost of a survey of the land involved.

Costs

(5) Despite subsection (4), an owner who makes an unsuccessful application is responsible for the costs referred to in subsection (4).

Idem

(6) A judge to whom an application is made under subsection (1), upon being satisfied that there is a basis for the application, shall, by order, declare the cemetery that is the subject-matter of the application to be abandoned.

Declaration

(7) Upon a declaration that a cemetery is abandoned being registered in the appropriate land registry office, the municipality becomes the owner of the cemetery with all the rights and obligations in respect to the cemetery and the assets, funds and trust accounts related thereto that the previous owner had.

Municipality becomes owner

(8) A declaration under this section may exempt the municipality being declared the owner from any provision of this Act or the regulations that it would be inappropriate, in the circumstances, for a new owner to be subject to.

Exemptions

(9) Upon an application being made to declare a cemetery abandoned, the municipality within which the cemetery is situated is responsible for the maintenance of the cemetery until the application is disposed of.

Maintenance

**61.** The Registrar may require any owner who has an interest in a cemetery that appears to be abandoned or neglected to maintain that cemetery as a condition of retaining a licence to own a cemetery or crematorium.

Dual interest

#### ADMINISTRATION

**62.—**(1) There shall be a Registrar appointed for the purposes of this Act.

Registrar

(2) There shall be one or more Deputy Registrars appointed who may exercise such powers and perform such duties of the Registrar as are delegated by the Registrar.

Deputy Registrars

(3) The Registrar, Deputy Registrars and all other employees necessary for the administration of this Act shall be appointed under the *Public Service Act*.

Application of R.S.O. 1980, c. 418



## Inspectors

**63.**—(1) The Registrar may appoint inspectors to carry out inspections for the purpose of determining whether there is compliance with this Act and the regulations.

## Certificate of appointment

(2) An inspector exercising a power under this Act shall, on request, produce his or her certificate of appointment.

## Inspections

**64.**—(1) For the purpose of ensuring compliance with this Act and the regulations, an inspector may,

- (a) enter any place at any reasonable time;
- (b) request the production for inspection of documents or things that may be relevant to the inspection;
- (c) inspect and, upon giving a receipt therefor, remove documents or things relevant to the inspection for the purpose of making copies or extracts;
- (d) inquire into negotiations, transactions, loans or borrowings of a licensee and into assets owned, acquired or disposed of by a licensee that are relevant to an inspection;
- (e) conduct such tests as are reasonably necessary to determine the integrity of a structure, fence or marker in a cemetery; and
- (f) remove materials or substances for examination or test purposes subject to the licensee or other occupant of the premises being notified thereof.

## Entry to dwellings

(2) Subsection (1) does not apply to confer a power of entry to a room actually used as a dwelling without the consent of the occupier.

## Warrant

(3) A justice of the peace may issue a warrant authorizing the person named in the warrant,

- (a) to do anything set out in clause (1) (a), (c), (e) or (f);
- (b) to enter and search a room actually used as a dwelling; or
- (c) to search for and seize any document or thing relevant to the inspection.

- (4) A warrant may be issued under subsection (3) if the justice of the peace is satisfied on information under oath that in the case of a warrant to be issued under,
- Requirements  
for warrant  
to issue
- (a) clause (3) (a), an inspector has been prevented from doing anything permitted under clause (1) (a), (c), (e) or (f) or there is reasonable ground to believe that an inspector may be prevented from doing any of those things;
  - (b) clause (3) (b), it is necessary that a room actually used as a dwelling be entered for the purposes of carrying out an inspection or there is, in such a room, a document or thing that there is reasonable ground to believe is relevant to an inspection under this Act; or
  - (c) clause (3) (c), it is necessary to search for and seize a document or thing that there is reasonable ground to believe will afford evidence relevant to a contravention of this Act or the regulations.
- (5) A warrant issued under this section shall specify the hours and days during which it may be executed.
- Execution of  
warrant
- (6) Unless renewed, a warrant under this section expires not later than thirty days after the date on which it is made.
- Expiry
- (7) A warrant under this section may be issued or renewed upon application without notice.
- Notice not  
required
- (8) A warrant under this section may be renewed for any reason for which it may be issued.
- Renewal of  
warrant
- (9) A person doing anything under the authority of a warrant issued under this section is authorized to call on such police officers to assist and to use such force as is necessary in the execution of the warrant.
- Assistance
- (10) An inspector carrying out an inspection, with or without a warrant, may be accompanied by such persons with expertise in the subject-matter of the inspection as the inspector considers necessary.
- Use of  
experts
- (11) An investigator taking material in order to copy it shall make the copy with reasonable dispatch and shall promptly return the material taken.
- Copies
- (12) Copies of, or extracts from, documents and things removed under this section and certified as being true copies
- Admissibility  
of copies

of, or extracts from, the originals by the person who made them are admissible in evidence to the same extent as, and have the same evidentiary value as, the documents or things of which they are copies or extracts.

Obstruction  
of inspector

**65.**—(1) No person shall obstruct an inspector in carrying out an inspection under this Act or withhold, destroy, conceal or refuse to provide any relevant information or thing required for the purpose of the inspection.

Facilitating  
inspection

(2) It is a condition of each licence issued under this Act that the licensee facilitate an inspection relevant to that licence.

Freezing  
assets

**66.**—(1) If the Director has reasonable and probable grounds to believe that the owner of a cemetery or crematorium is doing or is about to do something that will jeopardize the public interest or the proper care and maintenance of a cemetery, the Director may direct any person holding, having on deposit or controlling assets of the owner or trust funds under the control of the owner to hold the assets or trust funds until further instructions are received from the Director to release a particular asset or trust fund from the direction.

Scope of  
direction

(2) In the case of a bank or a corporation, a direction under subsection (1) applies only to the offices, branches or agencies thereof named in the direction.

Application  
for directions

(3) Any person named in a direction issued under subsection (1), if in doubt as to the application of the direction to particular assets or trust funds, may apply to the Director for an order of clarification.

Revocation  
or  
amendment  
of direction

(4) On an application of the owner or any other person having an interest therein, the Director may make an order on such conditions as are set out in the order revoking the direction or consenting to the release of a particular asset or trust fund from the direction.

Appeal

(5) Any person affected by a direction or order of the Director made under this section or a refusal to make an order may appeal to the Tribunal.

Restraining  
order

**67.**—(1) If the Director is of the opinion that any person is not complying with this Act or the regulations, despite the imposition of any penalty in respect of the non-compliance and in addition to any other remedy available, the Director may apply to a judge of the High Court for an order directing the person to comply.

(2) Upon an application under subsection (1), the judge <sup>Idem</sup> may make the order applied for or such other order as the judge thinks appropriate.

(3) An appeal lies to the Divisional Court from an order <sup>Idem</sup> made under subsection (2).

#### BURIAL SITES

**68.** No person shall disturb or order the disturbance of a <sup>Disturbing burial site prohibited</sup> burial site or artifacts associated with the human remains except,

(a) on instruction by the coroner; or

(b) pursuant to a site disposition agreement.

**69.** Any person discovering or having knowledge of a <sup>Unmarked burial sites</sup> burial site shall immediately notify the police or coroner.

**70.**—(1) The Registrar may order the owner of land on <sup>Investigation</sup> which a burial site is discovered to cause an investigation to be made to determine the origin of the site.

(2) Section 68 does not apply to a person investigating the <sup>Idem</sup> nature or origin of the site who is disturbing the site in the course of the investigation.

(3) A person conducting an investigation shall do so with <sup>Idem</sup> the minimum disturbance to the site that is reasonable in the circumstances.

(4) If the Registrar is of the opinion that an investigation <sup>Idem</sup> under subsection (1) would impose an undue financial burden on the land owner, the Registrar shall undertake the investigation.

**71.**—(1) As soon as the origin of a burial site is deter- <sup>Declaration</sup> mined, the Registrar shall declare the site to be,

(a) an unapproved aboriginal peoples cemetery;

(b) an unapproved cemetery; or

(c) an irregular burial site.

(2) For the purpose of subsection (1),

<sup>Interpretation</sup>



- (a) an irregular burial site is a burial site that was not set aside with the apparent intention of interring therein human remains;
- (b) an unapproved cemetery is land set aside with the apparent intention of interring therein, in accordance with cultural affinities, human remains and containing remains identified as those of persons who were not one of the aboriginal peoples of Canada;
- (c) an unapproved aboriginal peoples cemetery is land set aside with the apparent intention of interring therein, in accordance with cultural affinities, human remains and containing remains identified as those of persons who were one of the aboriginal peoples of Canada;

Definition

(3) For the purposes of this section and section 72, “unapproved” means not approved in accordance with this Act or a predecessor of this Act.

Site disposition agreement

**72.**—(1) The Registrar, on declaring a burial site to be an unapproved aboriginal peoples cemetery or an unapproved cemetery, shall serve notice of the declaration on such persons or class of persons as are prescribed.

Idem

(2) All persons served with notice under subsection (1) shall enter into negotiations with a view of entering into a site disposition agreement.

Idem

(3) If a site disposition agreement is not made within the prescribed time, the Registrar shall refer the matter to arbitration.

Idem

(4) Despite subsection (3), the Registrar, if of the opinion that an agreement may be reached, may defer referring the matter to arbitration so long as there appears to be a reasonable prospect of an agreement being reached.

Arbitrated settlement

**73.** The persons named in an arbitrated settlement who have been given the opportunity to fully participate in the arbitration process are bound by the settlement whether they chose to participate or not.

Irregular burial site

**74.**—(1) An owner of land that contains an irregular burial site shall ensure that the remains found in the site are interred in a cemetery.

(2) No owner of a cemetery interring human remains for an owner of land to whom this section applies may charge more than the prescribed amount for the interment. Charges

**75.**—(1) No person shall alter or move the remains or marker of a Canadian or Allied veteran or a Commonwealth War Burial without the agreement of the Department of Veterans Affairs (Federal), the Commonwealth War Graves Commission or such other persons and associations as are prescribed. War Graves

(2) Subsection (1) applies with respect to the alteration or removal of the remains or a marker of a Canadian or Allied veteran only if the Department of Veterans Affairs (Federal) contributed to the cost of the interment. Idem

(3) If an agreement is not reached, the person who wants to make the alteration or move may apply to the Registrar for directions. Idem

(4) When an application is made under subsection (3), the Registrar shall instruct the applicant to give notice of the application to such persons and associations as the Registrar considers may have an interest in the matter. Idem

(5) All persons and associations receiving a notice under subsection (4) may make submissions on the matter to the Registrar in such form and manner as the Registrar instructs. Idem

(6) After considering all submissions made, the Registrar shall direct the applicant on the manner of dealing with the remains or marker in question. Idem

(7) Subsection (1) does not apply to a person altering or moving remains or markers in accordance with the direction of the Registrar. Idem

**76.**—(1) The Lieutenant Governor in Council may make regulations, Regulations

1. prescribing documents, information and notices to be provided in the course of an application;
2. prescribing fees and requiring the payment of fees;
3. providing for the manner in which a deposit required for approval shall be applied or returned;
4. prescribing classes of cemeteries;

5. prescribing, for any notice required to be given under this Act, the type of notice and the manner in which it is to be given;
6. prescribing requirements and standards for the placing and spacing of interments, markers, fixtures, fences or other structures in a cemetery;
7. prescribing the minimum depth of coverage for in-ground burials;
8. prescribing the drains, sewers and other structures for the flow of water required in a cemetery;
9. governing mausolea, columbaria and other structures on or in a cemetery and establishing construction standards;
10. prescribing classes and types of licences;
11. governing the issue of licences and providing for the renewal of licences;
12. governing the term during which each class or type of licence is valid;
13. prescribing conditions that attach to any class or type of licence;
14. providing for posting of bonds and prescribing the amounts thereof;
15. providing for the forfeiture of posted bonds and for the distribution of the proceeds of forfeited bonds;
16. prescribing practices or actions that are evidence of incompetence or lack of honesty and integrity;
17. requiring the approval of the Registrar for promotional and sales material and prescribing the criteria for approval;
18. prescribing the type of promotional and sales material that requires the approval of the Registrar and providing for its submission to the Registrar;
19. governing and prohibiting the use of any promotional or sales material or any practice;

20. prescribing records and information to be kept by licensees;
21. providing for and requiring the submission of records and information and providing for access by agents of the Registrar to records and information;
22. prescribing the form of and conditions to be included in contracts for the sale of interment rights and cemetery supplies and services;
23. prescribing the information to be supplied to purchasers of interment rights and cemetery supplies and services;
24. prescribing the form of and information to be included in certificates of interment rights;
25. prescribing information to be provided to the public, any person or any class of persons and prescribing the manner of providing that information;
26. governing advertising and the manner of soliciting business;
27. requiring the use of any prescribed forms;
28. governing the use of contracts and certificates;
29. governing the uses to which owners may apply income from Care and Maintenance Funds;
30. prescribing records and information on trust funds to be provided to purchasers of interment rights and pre-need supplies or services;
31. governing the establishment, maintenance and operation of trust funds including the Care and Maintenance Fund and the Pre-need Assurance Fund;
32. governing the payment of money into and out of trust funds including the time within which and the circumstance under which payments are to be made;
33. prescribing fees that may be retained by trustees in respect of any type of trust fund;
34. governing the interment, disinterment, disposition and removal of human remains;



35. governing the preparation of disinterred human remains for transportation including prescribing the design and material of container to be used;
36. prescribing standards for the construction, installation, stabilization and preservation of markers and other cemetery supplies and requiring compliance with the standards;
37. governing the standards of care and maintenance required for a cemetery;
38. governing the procedure for approving by-laws made by owners and for revoking any by-laws made by owners;
39. prescribing the criteria that the Registrar shall use in approving by-laws;
40. governing the manner of conducting cremations and dealing with cremated remains;
41. prescribing amounts to be deposited, in trust, to compensate for disposing of cremated remains and regulating the handling of the trust moneys;
42. governing the location and ownership of cemeteries and crematoria;
43. governing prices and the range of prices that may be included on price lists filed with the Registrar by owners;
44. prescribing procedures to be followed in dealing with burial sites and requiring that they be followed;
45. governing arbitration in the absence of a site disposition agreement and requiring compliance with prescribed procedure;
46. prescribing the subject-matters to be contained in a site disposition agreement or arbitration settlement and requiring their inclusion;
47. exempting any person or class of persons, any cemetery or class of cemetery or anything or class of thing from any provision of this Act or the regulations;

- 48. prescribing conditions subsequent or precedent for a prescribed exemption and providing that an exemption may be subject to the Registrar being satisfied that it is not contrary to the public interest;
- 49. prescribing what constitutes notice in any provision where notice is required to be given;
- 50. governing the time for giving any notice for which a time is not set out in this Act and delegating to the Registrar power to extend any prescribed time;
- 51. prescribing anything that is referred to in this Act as being prescribed.

(2) Any regulation may be general or specific or of limited application. Limitation

**77.** No person shall cause or commit a nuisance in a cemetery or wilfully and unlawfully disturb persons assembled for the purpose of interring human remains in a cemetery. Interfering with cemetery

**78.—**(1) Any person who, in a cemetery, damages or moves any tree, plant, marker, fence, structure or other thing usually erected, planted or placed in a cemetery is liable to the cemetery owner and any interment rights holder who, as a result, incurs damage. Cause of action

(2) In an action under subsection (1), the amount of damages shall be the amount required to restore the cemetery to the state that it was in before anything was damaged or moved by the person liable. Idem

(3) Any person collecting damages under this section shall use the full amount collected to restore the cemetery. Idem

**79.—**(1) Every person who, Offence

- (a) furnishes false, misleading or incomplete information in an application under this Act or in a statement or return required to be furnished under this Act or the regulations;
- (b) fails to comply with an order made under this Act;  
or
- (c) contravenes any provision of this Act or the regulations,

is guilty of an offence.

Idem (2) Every director or officer of a corporation who concurs in an offence under this Act is guilty of an offence.

Idem (3) An individual who is convicted of an offence under this Act is liable to a fine of not more than \$20,000 and, on a subsequent conviction, to a fine of not more than \$20,000 and to imprisonment for a term of not more than one year.

Idem (4) A corporation that is convicted of an offence under this Act is liable to a fine of not more than \$40,000.

Limitation (5) Subject to subsection (6), no proceeding under this section shall be commenced more than two years after the offence was committed.

Idem (6) No proceeding under clause (1) (a) or subsection 35 (2) or 36 (3) or section 68 shall be commenced more than one year after the facts upon which the proceeding is based first came to the knowledge of the Registrar.

Restitution (7) If a person is convicted of an offence under this Act, the court making the conviction may, in addition to any other penalty, order the person convicted to make compensation or restitution in relation thereto.

Certificate as evidence **80.** A statement as to,

- (a) the consent or lack of consent to establish, alter or increase the capacity of a cemetery or crematorium;
- (b) the licensing or non-licensing of any person;
- (c) the filing or non-filing of any document or material required or permitted to be filed with the Registrar;
- (d) the time when the facts upon which proceedings are based first came to the knowledge of the Registrar; or
- (e) any other matter pertaining to licensing, non-licensing, filing or non-filing,

purporting to be certified by the Registrar is, without proof of the office or signature of the Registrar, admissible in evidence in any proceeding, in the absence of evidence to the contrary, of the facts stated therein.

Municipal powers

**81.—(1)** A municipality may expropriate,

- (a) a cemetery or part thereof, whether the cemetery exists within or outside the municipality; and
- (b) land on which to establish or enlarge a cemetery.

(2) The council of a municipality may pass by-laws author- Idem  
izing,

- (a) the purchase of a cemetery or part thereof that is situated within the municipality;
- (b) the acquisition of land within the municipality or in an adjacent township or unorganized territory for a cemetery or for the enlargement of an existing cemetery owned by the municipality; or
- (c) the sale, transfer or lease of a cemetery or part thereof.

**82.**—(1) If there is an appeal under this Act to the Tribunal  
Tribunal, it shall appoint a time for and hold a hearing.

(2) After holding a hearing, the Tribunal may by order Order  
direct the Registrar to take an intended action or to refrain from taking an action or to take such action as the Tribunal considers that the Registrar ought to take and for such purposes the Tribunal may substitute its opinion for that of the Registrar.

(3) The Tribunal may attach such conditions to its order or Conditions  
to the licence as it considers proper to give effect to the purposes of this Act.

(4) The Registrar, the applicant or licensee who has Parties  
required the hearing and such other persons as the Tribunal may specify are parties to proceedings before the Tribunal under this Act.

**83.**—(1) A notice, order or other document under this Service  
Act or the regulations is sufficiently given, served or delivered if delivered personally or sent by first class mail addressed to the person to whom it is to be given, served or delivered at that person's last known address.

(2) A notice, order or other document sent by first class Idem  
mail in accordance with subsection (1) shall be deemed to be given, served or delivered on the fifth day after the day of mailing, unless the person to whom it is sent establishes that the notice, order or other document was not received until a



later date because of absence, accident, illness or other cause beyond that person's control.

Stay

R.S.O. 1980,  
c. 274

**84.** Despite the fact that a licensee appeals from an order of the Tribunal under section 11 of the *Ministry of Consumer and Commercial Relations Act*, the order takes effect immediately but the Tribunal may grant a stay until the disposition of the appeal.

Surrender of  
licence

**85.** The Registrar may, at any time, cancel a licence upon the written request of the licensee and the surrender of the licence by the licensee.

Transition

**86.**—(1) An approval given under the *Cemeteries Act*, being chapter 59 of the Revised Statutes of Ontario, 1980, shall be deemed to be a consent given under this Act.

Idem

(2) Every person who is an owner on the day this Act comes into force shall be deemed to be licensed under this Act to own the cemetery or crematorium.

Idem

(3) Every person who was employed as a sales representative selling interment rights, cemetery supplies or cemetery services on the day this Act comes into force shall be deemed to be licensed as a sales representative under this Act representing the owner employing that person.

Idem

(4) Subject to subsection (5), subsections (2) and (3) cease to apply one year after this Act comes into force.

Idem

(5) If a person who is deemed, under subsection (2) or (3), to be licensed under this Act applies for a comparable licence under this Act within one year after this Act comes into force, the deemed licence remains in force until the application is finally disposed of.

Idem

(6) Funds set up under the *Cemeteries Act*, being chapter 59 of the Revised Statutes of Ontario, 1980, for,

(a) perpetual care shall be deemed to be a Care and Maintenance Fund; and

(b) pre-need supplies or services shall be deemed to be a Pre-need Assurance Fund.

Act prevails

**87.** This Act prevails over Part VI of the *Ontario Heritage Act*, being chapter 337 of the Revised Statutes of Ontario, 1980.

**88.** Section 1 of *The Toronto General Burying Grounds Act, 1977*, being chapter 110, is repealed and the following substituted therefor:

**1.** The Trustees of the Toronto General Burying Grounds may, in addition to its existing powers to acquire and hold land, acquire and hold land and may exercise all its corporate powers with reference thereto. Power to  
acquire land

**89.** The *Cemeteries Act*, being chapter 59 of the Revised Statutes of Ontario, 1980, is repealed. Repeal

**90.** This Act comes into force on a day to be named by proclamation of the Lieutenant Governor. Commence-  
ment

**91.** The short title of this Act is the *Cemeteries Act, 1989*. Short title









# Bill 31

*(Chapter 50  
Statutes of Ontario, 1989)*

## An Act to revise the Cemeteries Act

The Hon. G. Sorbara

*Minister of Consumer and Commercial Relations*

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<i>1st Reading</i>	June 12th, 1989
<i>2nd Reading</i>	June 21st, 1989
<i>3rd Reading</i>	October 16th, 1989
<i>Royal Assent</i>	October 16th, 1989

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**Bill 31****1989****An Act to revise the Cemeteries Act**

HER MAJESTY, by and with the advice and consent of the Legislative Assembly of the Province of Ontario, enacts as follows:

**1. In this Act,**

Definitions

“burial site” means land containing human remains that has not been approved or consented to as a cemetery in accordance with this Act or a predecessor of this Act;

“by-laws”, when used in relation to a cemetery, means the rules under which a cemetery or crematorium is operated;

“cemetery” means land set aside to be used for the interment of human remains and includes a mausoleum, columbarium or other structure intended for the interment of human remains;

“cemetery services” means,

(a) in respect of a lot,

(i) opening and closing of a grave,

(ii) interring or disinterring human remains,

(iii) providing temporary storage in a receiving vault,

(iv) construction of a foundation for a marker,

(v) setting of corner posts,

(vi) providing,

(A) a tent or canopy,

(B) carrying and lowering devices, and



- (C) ground cover,
  - for an interment service, and
  - (vii) preparing flower beds and planting flowers and shrubs,
- (b) in respect of a crypt or compartment in a mausoleum,
  - (i) opening, closing and sealing of the crypt or compartment,
  - (ii) providing temporary storage in a vault or crypt,
  - (iii) providing a tent or canopy for an interment service, and
  - (iv) providing elevating devices,
- (c) in respect of a niche or compartment in a columbarium,
  - (i) opening, closing and sealing of the niche or compartment, and
  - (ii) providing a tent or canopy for an interment service,
- (d) in respect of a crematorium, all services provided by the owner of the crematorium at the crematorium, and
- (e) in respect of a cemetery, such other services as are provided by the owner of the cemetery at the cemetery;

“cemetery supplies” includes interment vaults, markers, flowers, liners, urns, shrubs and artificial wreaths and other articles intended to be placed in a cemetery;

“columbarium” means a structure designed for the purpose of interring cremated human remains in sealed compartments;

“commercial cemetery” means a cemetery operated for the purpose of making a profit for the owner;

“crematorium” means a building fitted with appliances for the purpose of cremating human remains and includes everything incidental and ancillary thereto;

“Director” means a Director appointed under the *Ministry of Consumer and Commercial Relations Act*; R.S.O. 1980,  
c. 274

“equity share” means a share of a class of shares that carries a voting right either under all circumstances or under some circumstances that have occurred and are continuing;

“human remains” means a dead human body and includes a cremated human body;

“income” means the interest or money earned, including the compounding thereof, by the investment of funds;

“inter” means the burial of human remains and includes the placing of human remains in a lot;

“interment rights” includes the right to require or direct the interment of human remains in a lot;

“interment rights holder” means a person with interment rights with respect to a lot and includes a purchaser of interment rights under the *Cemeteries Act*, being chapter 59 of the Revised Statutes of Ontario, 1980, or a predecessor of that Act;

“land registry office” means the land registry office or the land titles office in the area in which a cemetery is located;

“lot” means an area of land in a cemetery containing, or set aside to contain, human remains and includes a tomb, crypt or compartment in a mausoleum and a niche or compartment in a columbarium;

“marker” means any monument, tombstone, plaque, headstone, cornerstone, or other structure or ornament affixed to or intended to be affixed to a burial lot, mausoleum crypt, columbarium niche or other structure or place intended for the deposit of human remains;

“mausoleum” means a building or structure, other than a columbarium, used as a place for the interment of the human remains in sealed crypts or compartments;

“Minister” means the Minister of Consumer and Commercial Relations;

“municipality” means the corporation or other entity having municipal jurisdiction in the area in which a cemetery is located and includes a police village, city, town, village, township or improvement district or the council thereof;

“owner” means an owner of a cemetery or a crematorium;

“person” includes a board of trustees, local council of a municipality or other organization or group of persons organized for the purpose of operating or managing a cemetery;

“plot” means two or more lots in which the rights to inter have been sold as a unit;

“pre-need supplies or services” means cemetery supplies or services that are not required to be provided until the death of a person alive at the time the arrangements are made;

“prescribed” means prescribed by the regulations made under this Act;

“Registrar” means the Registrar appointed under this Act;

“sales representative” means,

- (a) a person who sells or offers for sale interment rights or cemetery supplies or services on behalf of a commercial cemetery, or
- (b) a person whose primary employment is selling interment rights or cemetery supplies or services;

“Tribunal” means The Commercial Registration Appeal Tribunal;

“trust fund” means a trust fund established for the purpose of this Act.

#### CONSENT TO ESTABLISH CEMETERY OR CREMATORIUM

Consent for  
cemetery,  
etc.

**2.** No person shall establish, alter or increase the capacity of a cemetery or crematorium without the consent of the Registrar.

Application  
for consent

**3.—(1)** An applicant for consent shall apply to the Registrar and,

- (a) pay the prescribed fee;

- (b) submit the prescribed documents showing the layout of the cemetery and the location of existing or proposed plots, lots, structures and fixtures; and
- (c) if the applicant is the owner of a commercial cemetery or a cemetery of a class prescribed for the purpose of this clause, pay a deposit in a prescribed amount into a Care and Maintenance Fund.

(2) If the cemetery or crematorium is proposed to be established or already exists in an area with municipal organization, the applicant, before applying for the consent of the Registrar, must obtain the approval to the proposal of the appropriate municipality. Approval required

(3) If the cemetery or crematorium is to be established or enlarged to encroach on land, in an area without municipal organization, that is Crown land at the time of the application for consent, the applicant, before applying for the consent of the Registrar, must obtain the approval to the proposal of the Minister of Natural Resources. Idem

**4.** A municipality that receives a request for an approval required by subsection 3 (2) may hold public hearings to determine if the approval is in the public interest. Public hearings

**5.—(1)** A municipality, upon receiving a request for approval, shall give or refuse to give the approval within a reasonable time after receiving the request. Decision

(2) In considering a request for an approval, the principal factor shall be the public interest. Public interest

(3) A municipality shall, upon arriving at a decision on an application, Notice of decision

(a) send a copy of the decision together with the reasons for it to the Registrar and to the applicant; and

(b) publish notice of the decision in a local newspaper.

(4) The applicant, Registrar or any person with an interest therein may, within fifteen days after publication of the notice of the decision, refer the decision of a municipality to the Ontario Municipal Board for a hearing. Appeal

(5) Despite subsection (4), if an applicant or the Registrar does not receive a copy of a decision until after the decision is published, the fifteen days referred to in subsection (4) apply Idem



after the applicant or Registrar, as the case may be, receives the copy.

Representation

(6) The Registrar is entitled to make representations to the Ontario Municipal Board in any appeal under subsection (4).

Board decision

**6.**—(1) The Ontario Municipal Board may reverse the decision appealed from and substitute its own decision.

Idem

(2) A decision of the Board that is substituted under subsection (1) shall be deemed to be the decision of the municipality.

Certificate of consent

**7.**—(1) The Registrar shall give a certificate of consent to the establishment, alteration or increase in the capacity of a cemetery or crematorium, as the case may be, if,

- (a) the applicant has the approval of the municipality or the Minister of Natural Resources;
- (b) the applicant is licensed to own that cemetery and is and will be on the granting of the licence in compliance with the requirements of this Act and the regulations and the laws intended for the protection of the environment and of health; and
- (c) where neither approval referred to in clause (a) is required, the Registrar is satisfied that the consent is in the public interest.

Notice of refusal to issue

(2) The Registrar, on refusing to give a certificate of consent, shall advise the applicant, in writing, of,

- (a) the reason for the refusal; and
- (b) the applicant's right to appeal.

Appeal

(3) An applicant who receives a notice under subsection (2) may appeal to the Tribunal within fifteen days after receiving the notice.

Order by Tribunal

(4) If the Tribunal finds that the applicant is in compliance with clauses (1) (a) and (b) or that giving the consent is in the public interest, as the case may be, the Tribunal shall order the Registrar to issue the certificate of consent applied for or a consent in a modified version.

Idem

(5) Upon receiving an order under subsection (4), the Registrar shall issue the certificate as ordered.

(6) A certificate of consent shall contain a sufficient description of the cemetery or crematorium so that the certificate may be registered in the appropriate land registry office. Registration

(7) Upon registration of a certificate of consent, the land described therein becomes a cemetery. Effect of registration

#### CLOSING CEMETERY

**8.**—(1) In this section and in sections 9, 10, 11, 12 and 13, a reference to a cemetery includes any part of a cemetery. Closing cemetery

(2) The Registrar may order a cemetery closed if the closing is in the public interest. Idem

(3) An order shall not be made under subsection (2) until, Notice

(a) notice of the intention to make the order is given in the manner and to the persons prescribed; and

(b) interested persons are given the opportunity to make submissions to the Registrar within such time as is prescribed.

(4) Notice is not required if, Idem

(a) the request is from the owner;

(b) no interments have been made in the cemetery to be closed; and

(c) the consent of all affected interment rights holders has been obtained.

**9.**—(1) In an order to close a cemetery, the Registrar may, Order

(a) declare a cemetery or a portion thereof closed;

(b) require the owner to disinter all human remains therein and specify the manner of disinterment and the manner and place of reintering or dealing with the remains;

(c) require the owner to remove any markers and relocate them to a specified place; and

(d) require the owner to provide or acquire equivalent interment rights for all holders of interment rights with respect to unused lots in the cemetery.

- Substitution (2) In an order to close a cemetery, the Registrar may designate another person to do anything that the owner may be required to do.
- Notice (3) The Registrar shall give every person who made a submission notice of the order and at the same time advise the person of the right of appeal.
- Coming into force (4) Subject to subsection (5), an order to close a cemetery comes into force thirty days after it is made unless there is an appeal filed before the order comes into force or the order sets out a later date.
- Idem (5) If submissions were made in respect of the order, the order comes into force thirty days after notice has been given to each person who made a submission unless there is an appeal filed before the order comes into force or the order sets out a later date.
- Idem (6) An order that is appealed comes into force upon being upheld by the Tribunal.
- Appeal **10.** A person with an interest therein may appeal, to the Tribunal,
- (a) an order to close a cemetery any time before the order comes into force; or
  - (b) a refusal to order a cemetery closed.
- Certificate **11.**—(1) The Registrar, upon being satisfied that the requirements in an order to close a cemetery have been complied with, shall issue a certificate, with a legal description of the land involved, that the cemetery is closed.
- Idem (2) Despite subsection (1), an applicant therefor is entitled to a certificate that a cemetery is closed if the cemetery had been closed by the Lieutenant Governor in Council but a certificate issued under subsection 59 (7) of the *Cemeteries Act*, being chapter 59 of the Revised Statutes of Ontario, 1980, or a predecessor of that subsection has not been registered.
- Registration (3) A certificate issued under this section may be registered in the appropriate land registry office.
- Effect of registration (4) Upon registration of a certificate of closing, the land described therein ceases to be a cemetery.
- Maintenance fund **12.**—(1) Where any money has been paid into a care and maintenance fund with respect to a cemetery that is to be

closed, the Registrar shall direct that money to be transferred to the trustee of the fund maintained by the owner of the cemetery into which the human remains are to be reinterred or where the interment rights are to be exercised.

(2) The amount transferred under subsection (1) is a credit against the amount required to be paid into the fund by the owner of the cemetery into which the human remains are to be reinterred or where the interment rights are to be exercised. Idem

**13.** Where any money has been paid into a pre-need assurance fund with respect to interment rights in a cemetery that is to be closed, the Registrar shall direct that money to be paid to the trustee of the fund maintained by the owner of the cemetery where alternative interment rights have been made available for the holders of interment rights in the cemetery to be closed. Pre-need  
assurance  
fund

#### LICENCES

**14.** No person shall own a cemetery or crematorium unless licensed under this Act to own that cemetery or crematorium. Licence  
required

**15.—(1)** A person may apply to the Registrar for a licence to own a cemetery or crematorium. Licence to  
own

(2) An applicant is entitled to a licence except if, Requirements

- (a) the applicant cannot reasonably be expected to be financially responsible in the operation of a cemetery or crematorium;
- (b) the past or present conduct of the persons referred to in subsection (3) affords reasonable grounds for belief that the applicant will not operate in accordance with the law and with integrity and honesty;
- (c) the applicant or managing employees of the applicant do not have the experience and competence required to manage the cemetery or crematorium in accordance with the law;
- (d) the applicant is carrying on activities that are, or will be if the applicant is licensed, in contravention of this Act or the regulations;
- (e) the applicant will, if licensed, be carrying on activities under this Act that are in contravention of another Act or a municipal by-law;



- (f) the applicant is unable to provide the resources and facilities required to manage a cemetery or crematorium; or
- (g) the applicant or an employee or agent of the applicant has made a false statement or provided false information in an application for a licence.

Idem

(3) Clause (2) (b) applies to the following persons:

1. The applicant.
2. An officer or director of the applicant.
3. A person holding more than 10 per cent of the equity shares of the applicant or an officer or director of such person.
4. Any person having a beneficial interest in the operation of the business of the applicant or licensee.

Issue of  
licence

(4) The Registrar shall issue a licence to own an identified cemetery or crematorium to an applicant therefor who pays the prescribed fee, complies with the regulations and is not disentitled under subsection (2).

Conditions  
attaching to  
licence

(5) A licence is subject to such conditions as may be consented to by the applicant, imposed by the Tribunal or prescribed.

Notice

(6) If the Registrar intends to refuse to issue a licence, the Registrar shall give the applicant notice of and reasons for the intention and, at the same time, advise the applicant of the right to appeal.

Appeal

(7) An applicant who receives a notice under subsection (6) may appeal the intended refusal to the Tribunal within fifteen days after receiving the notice.

Refusal to  
issue licence

(8) If no appeal is filed under subsection (7), the Registrar may refuse to issue the licence applied for.

Revocation  
of owner's  
licence

**16.—**(1) The Registrar may revoke or refuse to renew a licence to own a cemetery or a crematorium if,

- (a) the conduct or situation of the licensee is such as to disentitle the licensee from being granted a licence;



- (b) where the licensee is a corporation, the shareholders of the corporation have changed in the manner and to the extent prescribed; or
- (c) the Registrar has reasonable and probable grounds to believe that the continued operation of the cemetery or crematorium by the licensee,
  - (i) creates a risk to public health, safety or decency, or
  - (ii) will result in a financial loss by members of the public because provisions of this Act or the regulations are not being complied with.

(2) If the Registrar intends to revoke or to refuse to renew a licence, the Registrar shall give the licensee notice of and reasons for the intention and, at the same time, advise the licensee of the right to appeal. Notice

(3) Any licensee who receives a notice under subsection (2) may appeal the intended revocation or refusal to the Tribunal within fifteen days after receiving the notice. Appeal

(4) If an appeal has been filed under subsection (3), the Registrar shall not revoke the licence unless the Tribunal determines that the licence should be revoked. Delay

(5) If no appeal is filed under subsection (3), the Registrar may revoke the licence after the time for appeal has expired. Where no appeal

(6) Section 14 does not apply to an owner whose licence is revoked so long as the Registrar is satisfied that the owner is making reasonable efforts to sell the cemetery or crematorium. Exception to licensing requirement

**17.—**(1) The Director may appoint a manager to operate a cemetery or crematorium in the place of the owner if, Appointment of manager

- (a) the Director has reasonable and probable grounds, based on a statement under oath, to believe that the owner is doing or is about to do something in the operation of the cemetery or crematorium that,
  - (i) creates or is likely to create a risk to public health, safety or decency, or
  - (ii) is causing or is likely to cause financial loss to members of the public; or

(b) the owner's licence is revoked.

Powers of  
manager

(2) A manager appointed under subsection (1) has all the powers of the owner with respect to the operation of the cemetery or crematorium including the power to exclude the owner and, if the owner is a corporation, the directors or officers of the corporation, from the premises of the business.

Effect of  
appointment

(3) From the appointment of a manager under subsection (1) until the appointment is cancelled, the owner being replaced does not have the authority to deal with any assets or trust funds relating to the cemetery or crematorium and shall not be involved in the operation of the cemetery or crematorium.

Appeal

(4) Any person affected by an appointment of a manager may apply to a judge of the Supreme Court for an order cancelling the appointment and the order may include such directions and conditions as seem appropriate.

Selling  
interment  
rights

**18.**—(1) No person shall sell interment rights unless that person does so as an agent acting on behalf of a licensed owner.

Selling  
supplies, etc.

(2) No person shall act as a sales representative on behalf of an owner unless that person is licensed as a sales representative and represents an owner specified in the sales representative's licence.

Exception for  
owners

(3) Subsections (1) and (2) do not apply to preclude a person licensed as an owner from selling rights, services or supplies to be used in or provided at a cemetery or crematorium owned by that person.

Licence to  
sell

**19.**—(1) An individual may apply to the Registrar for a licence to act as a sales representative on behalf of an owner.

Requirements  
for licence

(2) An applicant is entitled to a licence except if,

- (a) the past or present conduct of the applicant affords reasonable and probable grounds for believing that the applicant will not carry on business in accordance with the law and with integrity and honesty;
- (b) the applicant, in receiving the licence, would be in a position of apparent conflict of interest;
- (c) the applicant does not have a position with a licensed owner or a commitment to be hired by a licensed owner upon receiving a licence; or

- (d) the applicant has made a false statement or provided false information in an application for a licence.

(3) A conviction for an offence that involves misrepresentation or a lack of integrity or honesty is evidence, in the absence of evidence to the contrary, that the person convicted will not carry on business in accordance with the law and with integrity and honesty within the meaning of clause (2) (a). Past conduct

(4) An applicant's intention to work for more than one owner is evidence, in the absence of evidence to the contrary, of an apparent conflict of interest. Conflict of interest

(5) The Registrar shall issue a licence to act as a sales representative to every applicant therefor who pays the prescribed fee, complies with the regulations and is not disentitled under subsection (2). Issue of licence

(6) A licence is subject to such conditions as may be consented to by the licensee, imposed by the Tribunal or prescribed. Conditions attaching to licence

(7) If the Registrar intends to refuse to issue a licence, the Registrar shall give the applicant notice of and reasons for the intention and, at the same time, advise the applicant of the right to appeal. Notice

(8) An applicant who receives a notice under subsection (7) may appeal the intended refusal to the Tribunal within fifteen days after receiving the notice. Appeal

(9) If no appeal is filed under subsection (8), the Registrar may refuse to issue the licence. Refusal to issue licence

**20.—**(1) The Registrar may revoke, suspend or refuse to renew a sales representative's licence if the conduct or situation of the licensee is such as to disentitle the licensee from being granted a licence. Revoking, suspending or refusing to renew sales licence

(2) If the Registrar intends to revoke, suspend or refuse to renew a licence, the Registrar shall give the licensee notice of and reasons for the intention and, at the same time, advise the licensee of the right to appeal. Notice

(3) If there are grounds to suspend a licence and the Registrar considers it to be in the public interest that the licence be suspended immediately, the Registrar may, by order, suspend a sales representative's licence with the order taking effect when it is made. Immediate suspension

- Idem (4) An immediate suspension expires fifteen days after it is appealed to the Tribunal unless, before the fifteen days expire, the Tribunal extends the suspension.
- Appeal (5) Any licensee who receives a notice under subsection (2) may appeal the intended revocation or suspension to the Tribunal within fifteen days after receiving the notice.
- Idem (6) Any licensee whose licence is suspended under subsection (3) may appeal the suspension to the Tribunal.
- Delay (7) If an appeal has been filed under subsection (5), the Registrar shall not revoke or suspend the licence unless the Tribunal determines that the licence should be revoked or suspended.
- Where no appeal (8) If no appeal is filed under subsection (5), the Registrar may revoke or suspend the licence after the time for appeal has expired.
- Application **21.**—(1) A person who is refused a licence or a renewal of a licence under this Act may apply for a licence only after one year has passed since the refusal.
- Idem (2) A person whose licence is revoked under this Act may apply for a licence only after one year has passed since the revocation.
- Continuation **22.** The licence of a licensee who has applied for a renewal of the licence continues until,
- (a) the renewal is granted; or
  - (b) if the licensee is served with a notice that the Registrar intends to refuse to renew, the time for appeal has expired or, if an appeal is required, the matter has been finally determined.

#### CONSUMER PROTECTION

- Interment rights **23.**—(1) An interment rights holder may require, by written demand, the owner to repurchase the rights at any time before they are used.
- Idem (2) Every owner who receives a demand made under subsection (1) shall repurchase the interment rights within thirty days after receiving the demand.
- Idem (3) The repurchase price of interment rights shall be determined in the prescribed manner.



(4) An interment rights holder or the personal representative of the holder has the right to inter any human remains in a lot or other facility approved under this Act in accordance with the by-laws governing the facility. Idem

(5) An interment rights holder or the personal representative of the holder may erect a commemorative marker on a lot or other receptacle for human remains if the erection of the marker is not in contravention of the by-laws governing the facility. Idem

(6) Every person has the right to reasonable access to a lot at any time except as prohibited by the by-laws governing the facility. Idem

(7) An interment rights holder and the relatives of any person whose remains are interred in a cemetery have the right to decorate the appropriate lot if the decoration is not in contravention of the by-laws governing the facility. Idem

(8) Subsection (1) does not apply to require repurchase of interment rights in a plot in which any interment rights have been exercised. Exception

**24.—**(1) A purchaser of pre-need supplies or services from an owner may cancel, by written notice to the owner, the contract to purchase at any time before the services or the supplies are provided or if the owner contravenes subsection (5). Pre-need services or supplies

(2) Subsection (1) or (5) does not apply if the supplies or services are provided within thirty days after the contract is made because of the death of the person for whom the supplies or services were contracted. Idem

(3) Subject to subsection (4), an owner who receives a notice that a contract is cancelled under this section shall refund to the purchaser all money, together with all income thereon, received under the contract within thirty days after receiving the notice. Idem

(4) An owner to whom this section applies may retain a service fee determined in the prescribed manner unless the contract is cancelled within thirty days after it is made. Idem

(5) No owner shall provide pre-need supplies or services under a contract within the thirty-day period immediately following the day the contract is made. Prohibition



- Application (6) This section applies to contracts for pre-need supplies or services whether the contracts were made before or after this section comes into force.
- Contract requirements **25.**—(1) A contract for the purchase of interment rights or cemetery supplies or services is not enforceable by an owner unless,
- (a) it is written, signed by both parties and complies with the regulations;
  - (b) it sets out the purchaser's cancellation rights under this Act and whether or not cemetery supplies or services are to be provided before the death of the person for whom they are contracted;
  - (c) the owner complies with subsections (2) and (3); and
  - (d) the owner delivers a signed copy of the contract to the purchaser at the time the contract is made.
- Idem (2) An owner who sells interment rights must deliver to the purchaser at the time the contract is made a copy of the by-laws of the cemetery and a certificate of interment rights.
- Idem (3) An owner who sells pre-need supplies or services must set out in the contract exactly what the supplies or services are and the price charged for them.
- Refund with interest (4) An owner who receives money under a contract that is not enforceable because of the application of this section shall refund to the purchaser, immediately upon written demand, with interest at the prescribed rate, all money received.
- Idem (5) Subsection (4) applies even though the owner has paid the money into a trust fund that is not accessible to the owner.
- Exception (6) Subsection (4) does not apply, in the case of interment rights, after the rights are used or, in the case of cemetery supplies or services, after the supplies or services are provided.
- Public information **26.** Every owner shall make such information as is prescribed available to the public in the manner and form prescribed.
- Price list **27.**—(1) Every owner shall file with the Registrar a price list of all interment rights and cemetery services and supplies

that may be sold and all charges that may be made by that owner.

(2) No owner shall charge or collect or receive money for interment rights or cemetery supplies or services that is more than the price for the rights, supplies or services filed by the owner with the Registrar and not disallowed. Idem

(3) The Registrar, upon receiving a price list, may disallow, within thirty days after the list is filed, any price that, in the opinion of the Registrar, is excessive or significantly higher than current market price for the supplies, services or rights within the applicable area. Approval of list

(4) The Registrar shall give immediate written notice to the owner who filed the price list of any price on the list that is disallowed and, in the notice, shall give the reasons for the disallowance. Notice of disallowance

(5) If the Registrar disallows a price on a price list, the owner who filed the list may appeal the disallowance to the Tribunal. Appeal

(6) An owner who has charged any person a price that is disallowed by the Registrar shall pay, forthwith, to that person the difference between the price charged and the price allowed. Repayment

**28.**—(1) If the Registrar believes, on reasonable and probable grounds, that any person licensed under this Act has made a false or misleading public representation or a representation that is in contravention of this Act or the regulations, the Registrar shall order that person to stop making the representation and, in the order, shall set out the reasons for the order. Advertising

(2) A person who receives an order under subsection (1) shall immediately comply with the order and shall refrain from making the representation, in any form, in the future. Compliance with order

(3) Any person who receives an order under subsection (1) may appeal the order to the Tribunal. Appeal

(4) The Tribunal may issue a stay of any order made by the Registrar under subsection (1). Stay of order

**29.**—(1) No person shall contact, in any way, a person in a hospital, nursing home or such other institution as is prescribed for the purpose of suggesting that a contract for the Soliciting prohibited

purchase of interment rights or cemetery supplies or services be made.

Idem

(2) No person shall contact, by telephone or in person, a person for the purpose of suggesting that a contract for the purchase of interment rights or cemetery supplies or services be made.

Exception

(3) This section does not prohibit any contact made at the request of the person being contacted.

Regulations

(4) The Lieutenant Governor in Council may make regulations defining “contract” for the purpose of this section.

Abandoned interment rights

**30.**—(1) A cemetery owner may apply to the Registrar for a declaration that interment rights are abandoned.

Idem

(2) An application may be made under subsection (1) only in respect of interment rights that had been sold at least twenty years before the application and have not been used.

Inquiry

(3) The Registrar, on receiving an application under subsection (1), shall make such inquiry and direct the applicant to give such notices as seem reasonable in the circumstances.

Declaration

(4) Upon being satisfied that the rights are abandoned, the Registrar shall issue a declaration to that effect.

Notice

(5) The Registrar shall give notice of the declaration or the decision to not make the declaration to the applicant and to every person who has indicated to the Registrar an interest in the matter.

Appeal

(6) Any person who has an interest in the matter may appeal the decision of the Registrar to the Tribunal within thirty days after notice of the decision is given under subsection (5).

Right to sell abandoned rights

**31.** A cemetery owner may resell interment rights that have been declared abandoned,

(a) if there is no appeal, at the end of the time for appeal; or

(b) if there is an appeal, when the appeal has been finally determined supporting the declaration.

Rights holder's protection

**32.**—(1) Any person whose interment rights have been resold after being declared abandoned may apply to the Registrar for redress.

(2) The Registrar, upon receiving an application under subsection (1), shall order the cemetery owner or the owner's successor, as the case may be, to provide, subject to subsection (6), better or equivalent interment rights in that cemetery or to refund an amount determined as prescribed. Idem

(3) Any person whose interment rights have been declared abandoned but have not been resold may apply to the Registrar to have those rights restored. Idem

(4) The Registrar, upon receiving an application under subsection (3), shall order that the declaration be cancelled and that the rights be restored to the person entitled thereto. Idem

(5) This section does not apply in respect of interment rights in cemeteries that are abandoned. Exception

(6) If the cemetery referred to in subsection (2) is one in which interment rights are not available but the owner owns a cemetery in which interment rights are available, the applicant shall be given the option of accepting better or equivalent interment rights in that cemetery. Idem

**33.**—(1) If a marker has been erected on a lot that is the subject-matter of a declaration of abandonment, the cemetery owner shall remove and store it at the owner's expense for at least twenty years. Markers

(2) If an order is made under subsection 32 (2) to provide alternate interment rights, the cemetery owner shall re-erect the marker at the new site at the owner's expense. Idem

(3) If subsection (2) does not apply, the cemetery owner may dispose of the marker at the expiration of the twenty-year period. Idem

**34.**—(1) A cemetery owner who has available space shall provide, upon receiving a written instruction from a welfare administrator, Assisted burials, cemetery

- (a) a lot for the interment of the remains of any person referred to in the instruction;
- (b) opening and closing services in conjunction with the interment; and
- (c) such other related services as are prescribed.

(2) A crematorium owner shall provide, upon receiving a written instruction from a welfare administrator, Crematorium



(a) a crematorium service for the remains of any person referred to in the instruction; and

(b) such other related services as are prescribed.

Exception

(3) Subsections (1) and (2) do not apply to require a religious organization to inter or cremate the remains of a person who is disentitled to burial or cremation in a cemetery or crematorium owned by that organization.

Payment

(4) An owner who provides a service under this section is entitled to be paid the prescribed amount for the service by the welfare administrator.

Welfare administrator

(5) The Lieutenant Governor in Council may make regulations defining “welfare administrator” for the purpose of this section and designating persons by title or job description who are considered welfare administrators for this purpose.

#### TRUST FUNDS

Care and maintenance trust funds  
1987, c. 33

**35.**—(1) Every cemetery owner who sells, assigns or transfers interment rights shall establish with a corporation registered under the *Loan and Trust Corporations Act, 1987*, with that corporation as trustee, a trust fund designated the “Care and Maintenance Fund” for the purpose of providing money for the care and maintenance of the cemetery.

Payments into fund

(2) An owner who is required to establish a fund under this section shall pay into the fund prescribed amounts within the prescribed times.

Payments out of fund

(3) A trustee of a fund established under this section shall pay the income from the fund, after deducting therefrom the trustee’s fees, to the owner of the cemetery involved.

Use of money

(4) An owner receiving money pursuant to subsection (3) shall use the money for the upkeep of the cemetery and the markers and structures therein in the prescribed manner.

Capital portion

(5) No trustee of a fund established under this section shall pay out any of the capital portion of the fund.

Idem

(6) Subsection (5) does not apply to preclude a trustee from transferring the fund, with the consent of the Registrar, to another trustee.

Municipal owners

(7) Despite subsection (1), an owner that is a municipality may act as the trustee of a Care and Maintenance Fund established by that municipality.



**36.—**(1) Every owner who sells pre-need cemetery supplies or services shall establish with a corporation registered under the *Loan and Trust Corporations Act, 1987*, with that corporation as trustee, a trust fund designated as the “Pre-need Assurance Fund”.

Pre-need  
assurance  
trust funds  
1987, c. 33

(2) Subsection (1) applies to an owner in respect of sales made by a person that the owner is associated or affiliated with in a manner that is prescribed.

Idem

(3) An owner who is required to establish a fund under this section shall pay into the fund all money received for pre-need supplies or services within the prescribed times.

Payments  
into fund

(4) A trustee of a fund established under this section shall hold all money received for the benefit of the purchaser until that portion of the contract in respect of which the money was paid is completed.

Trust funds

(5) When a portion of a contract is completed, the trustee shall pay to the owner the lesser of,

Idem

(a) the current market price filed with the Registrar for the supplies or services; or

(b) an amount equal to the payments made for the supplies or services together with income accrued on those payments.

(6) If the amount referred to in clause (5) (b) exceeds the price referred to in clause (5) (a), the trustee shall pay the amount of the excess to the owner.

Idem

(7) If a contract in respect of which money is held in the trust fund is cancelled, the trustee shall pay, to the owner, the amount of the initial payments together with income accrued on that amount.

Prior  
cancellation

(8) Subject to subsection 24 (4) (retention of service fee), an owner who receives a payment under subsection (7) shall pay the amount to the purchaser involved within twenty days after receiving the payment.

Payment to  
purchaser

(9) An owner who receives a payment under subsection (6) shall pay the amount to the purchaser or, if an interment has taken place, to the estate of the person interred within twenty days after receiving the payment.

Idem

Municipal  
owners

(10) Despite subsection (1), an owner that is a municipality may act as the trustee of a Pre-need Assurance Fund established by that municipality.

Restrictions  
on trust  
agreements  
R.S.O. 1980,  
c. 512

**37.** No investment of money in a trust established pursuant to this Act shall be made except as permitted under the *Trustee Act*.

Marker  
installation

**38.**—(1) Every person installing a marker in a cemetery shall pay to the cemetery owner the prescribed amount.

Payment into  
fund

(2) An owner receiving money pursuant to subsection (1) shall pay the money into the Care and Maintenance Fund established for that cemetery.

Idem

(3) An owner who does not receive payment under subsection (1) for a marker shall pay into the Care and Maintenance Fund a prescribed amount.

Trust funds  
held by  
owner

**39.**—(1) All money received by an owner that is required to be paid into a trust fund but that is not immediately turned over to a trustee of a trust fund shall be deposited by the owner in a trust account with a credit union or caisse populaire registered under the *Credit Unions and Caisses Populaires Act*, a chartered bank of Canada, the Province of Ontario Savings Office or a trust or loan corporation registered under the *Loan and Trust Corporations Act, 1987*.

R.S.O. 1980,  
c. 102

1987, c. 33

Idem

(2) Money deposited by an owner in a trust account under subsection (1) shall be placed by the owner into a trust fund or otherwise paid out in accordance with this Act or the regulations within the time prescribed.

Providing  
information,  
etc.

**40.**—(1) The Registrar or the Public Trustee may require any owner or trustee to provide,

- (a) any information on trust accounts or trust funds that the owner or trustee is involved with; and
- (b) audited financial statements on any trust account or trust fund relating to a cemetery or crematorium that the owner or trustee is involved with.

Idem

(2) Every owner or trustee who receives a request pursuant to subsection (1) shall forthwith provide all the information or statement required or an explanation as to why it is not possible to provide the information or statement.

Surrogate  
Court

**41.**—(1) The Registrar or the Public Trustee may apply to the Surrogate Court to pass the accounts of any trust fund.

(2) The court, on passing any account, may review and pass upon any agreement made by an owner of a cemetery or crematorium. Idem

(3) The court, on passing any account, may make any order that it considers necessary to ensure that the trust is carried out. Idem

**42.** No cemetery or crematorium owner shall charge or receive any compensation or payment for the effort or expense of establishing or maintaining a trust fund. No compensation to owner

**43.—**(1) Despite subsections 35 (1) and 36 (1), an owner who does not have a practical alternative may require the Public Trustee to act as a trustee for that owner's Care and Maintenance Fund or Pre-need Assurance Fund. Use of Public Trustee

(2) The Registrar and the Public Trustee have an interest in all trust funds. Interested parties

#### CEMETERY AND CREMATORIUM OPERATIONS

**44.—**(1) Every cemetery owner shall maintain, without charge to interment rights holders, the grounds of the cemetery, including all lots, structures and markers, to ensure the safety of the public and to preserve the dignity of the cemetery. Maintenance by cemetery owner

(2) Despite subsection (1), an owner of a non-commercial cemetery may charge interment rights holders, at a rate approved by the Registrar, for the maintenance of lots and markers that were sold before 1955 if there were no trust funds collected for that purpose. Exception

**45.** No owner shall carry on business, in a manner prescribed, in conjunction with a person licensed to operate a funeral establishment or transfer service. Operating with funeral establishment, etc.

**46.** Every cemetery owner shall ensure that all interments in the cemetery are carried out in a decent and orderly manner and that quiet and good order are maintained in the cemetery at all times. Good order

**47.** No person shall inter human remains except in a cemetery that has been consented to by the Registrar and is owned by an owner licensed under this Act. Interment in cemetery only

**48.** If a marker in a cemetery presents a risk to public safety because it is unstable, the owner of the cemetery shall Repairing markers

do whatever is necessary by way of repairing, resetting or laying down the marker so as to remove the risk.

Mortgage on cemetery

**49.**—(1) No encumbrance or charge on a cemetery or crematorium is enforceable unless it was given as security for money borrowed for,

- (a) the purpose of improving the facilities provided;
- (b) the purpose of acquiring land for a cemetery or crematorium; or
- (c) a purpose, approved by the Registrar, relating to the operation of the cemetery or crematorium.

Restriction

(2) No encumbrancer claiming an interest in a cemetery or crematorium may deal with the cemetery or crematorium except in accordance with this Act.

By-laws

**50.**—(1) No person shall operate a cemetery or crematorium except in accordance with the by-laws applying to that cemetery or crematorium.

Owner's by-laws

(2) An owner of a cemetery or crematorium may make by-laws affecting the operation of the cemetery or crematorium.

When effective

(3) No by-law made by an owner is effective until it is filed with and approved by the Registrar.

Prescribed by-laws

(4) The Lieutenant Governor in Council may make regulations prescribing by-laws that apply to cemeteries or crematoria or to any prescribed classes of cemeteries or crematoria.

Notice of by-laws

(5) An owner filing a by-law shall give such notice as is prescribed to such classes of persons as are prescribed.

Approval by Registrar

(6) A by-law filed with the Registrar under this section shall be approved by the Registrar unless the approval is not in the public interest or the effect of the by-law is to give the owner an unreasonable or unfair competitive advantage over another supplier of cemetery services or supplies.

Revocation of by-laws

(7) The Registrar may revoke any by-law that the Registrar could have refused to approve under subsection (6).

Idem

(8) Subsection (7) applies even though the Registrar has previously approved the by-law.

Notice of disallowance or revocation

(9) If the Registrar intends to refuse to approve or revoke a by-law, the Registrar shall give the owner notice of the inten-

tion and, at the same time, advise the owner of the right to appeal.

(10) An owner who receives a notice under subsection (9) may appeal the intended refusal or revocation to the Tribunal within fifteen days after receiving the notice. Appeal

(11) If an appeal is filed against an intended revocation, the Registrar shall not revoke the by-law unless the Tribunal determines that the by-law should be revoked. Delay in revocation

(12) If no appeal is filed against an intended revocation, the Registrar may revoke the by-law after the time for appeal has expired. Where no appeal

**51.—**(1) Subject to subsection (2), no person shall disinter any human remains without, Disinterment

- (a) the prior consent of the interment rights holder; and
- (b) notifying the proper medical officer of health.

(2) Subsection (1) does not apply to a disinterment ordered by, Where consent not required

- (a) a court of competent jurisdiction;
- (b) a coroner appointed under the *Coroners Act*; R.S.O. 1980, c. 93
- (c) the Attorney General or Solicitor General for Ontario; or
- (d) the Registrar under section 9.

(3) For the purpose of clause (1) (a), the consent of the Registrar may be substituted for that of the interment rights holder if, Idem

- (a) the whereabouts of an interment rights holder are not known;
- (b) the interment rights holder is not readily ascertainable; or
- (c) the interment rights holder is not able to consent.

(4) No person shall disinter human remains except in accordance with the regulations. Compliance with regulations



Exception (5) Clause (1) (b) does not apply to the disinterment of cremated human remains.

Consent of Registrar **52.**—(1) The Registrar, before consenting to a disinterment, shall consider whether any known person may have an interest in the disposition of the remains and, if there may be such a person, shall order that notice of the intention to disinter be given.

Notice of intention (2) A notice of intention to disinter shall be given in the manner and form set out in the order.

Objections (3) Any person objecting to a disinterment may file a written objection with the Registrar at any time before the consent of the Registrar is given.

Idem (4) If any person files an objection to a disinterment, the Registrar shall determine whether that person has an interest in the remains and, if so, shall ascertain the person's wishes.

Conditions for consent (5) In giving a consent to a disinterment, the Registrar shall take into account the wishes of any person with an interest in the remains and make the consent subject to such conditions as the Registrar considers appropriate.

Notice of decision (6) Notice of the Registrar's decision shall be given to the person who applied for the consent, to any person to whom notice is given under subsection (1) and to any person filing an objection.

Appeal (7) A person receiving a notice under subsection (6) may appeal, to the Tribunal, the Registrar's decision within fifteen days after receiving the notice.

Delay (8) If an appeal is filed under subsection (7), the Registrar shall not consent to the disinterment unless the Tribunal determines that the disinterment should proceed.

Where no appeal (9) If no appeal is filed under subsection (6), the Registrar may consent to the disinterment after the time for appeal has expired.

Attendance by medical officer **53.**—(1) A medical officer of health has the authority to attend at, supervise and direct a disinterment.

Diseases (2) If a medical officer of health determines that remains are those of a person who died of a communicable disease within the meaning of the *Health Protection and Promotion Act, 1983*, the remains shall not be dealt with in any way except as prescribed by the regulations made under that Act.

**54.** No person shall remove human remains from a cemetery unless a certificate of a medical officer of health or the cemetery owner confirming that this Act and the regulations have been complied with is affixed to the container.

Certificate  
required

**55.** A burial certificate under the *Vital Statistics Act* is not required to reinter human remains that have been disinterred in accordance with this Act and the regulations.

R.S.O. 1980,  
c. 524,  
does not  
apply

**56.—(1)** No person shall cremate human remains except in a crematorium that has been established with the consent of the Registrar and is owned by an owner licensed under this Act.

Cremation

(2) No person shall cremate human remains,

Prohibitions

(a) for which there is not a coroner's certificate supplied by the Ministry of Consumer and Commercial Relations;

(b) in a container made of, or containing, non-flammable or hazardous material or a prescribed material; or

(c) in which a pacemaker or other prescribed device is implanted.

(3) Except if required by a welfare administrator or for the purpose of compliance with this Act or the regulations made under this Act, a crematorium owner has the right to refuse to cremate any human remains.

Right to  
refuse

**57.** Every crematorium owner shall ensure that all cremations in the crematorium are carried out in a decent and orderly manner and that quiet and good order are maintained in the crematorium at all times.

Good order

**58.—(1)** Any person who purchases a cremation service shall deposit, at the request of the crematorium owner, a prescribed amount with the owner to cover the cost of interring the cremated remains.

Deposit re  
disposal

(2) An owner receiving money under subsection (1) shall hold the money in trust.

Held in trust

(3) If the cremated remains are claimed by the interment rights holder within one year after the cremation, the owner shall refund the money to the person entitled thereto at the time of the claim.

Refund

Owner's  
compensation

(4) If, after one year, the cremated remains have not been claimed and the owner has made reasonable efforts to contact the representatives of the deceased, the owner may inter them and is then entitled to the money held in trust as compensation.

Neglected  
cemetery

**59.**—(1) A municipality may order a cemetery owner who does not keep the cemetery in good order and repair to restore it to good order and repair.

Appeal

(2) An owner may appeal, to the Registrar, an order to restore within fifteen days after receiving the order.

Idem

(3) The Registrar, on receiving an appeal, shall invite submissions from the owner and the municipality and shall make such other inquiries as are appropriate in the circumstances.

Idem

(4) After considering submissions made and the circumstances, the Registrar shall confirm or reverse the order of the municipality or substitute his or her order for that of the municipality.

R.S.O. 1980,  
c. 484  
does not  
apply  
Repairs

(5) The *Statutory Powers Procedure Act* does not apply to an appeal under this section.

(6) If an owner does not restore a cemetery as specified in an order given under subsection (1) within such reasonable time as is set out in the order, the municipality may have the required work done and recover the costs thereof from the owner.

Abandoned  
cemeteries

**60.**—(1) An application to declare a cemetery abandoned may be made to a judge of the District Court if the owner of the cemetery,

(a) cannot be found or is unknown;

(b) is unable to maintain it;

(c) was a corporation that was dissolved; or

(d) is not licensed as an owner under this Act.

Application

(2) An application to declare a cemetery abandoned may be made by the owner of the cemetery, the municipality or the Registrar.

Notice of  
application

(3) An applicant under subsection (2) must give notice of the application to the other persons referred to in subsection (2).

(4) The municipality is responsible for the cost of an application under this section including the cost of a survey of the land involved. Costs

(5) Despite subsection (4), an owner who makes an unsuccessful application is responsible for the costs referred to in subsection (4). Idem

(6) A judge to whom an application is made under subsection (1), upon being satisfied that there is a basis for the application, shall, by order, declare the cemetery that is the subject-matter of the application to be abandoned. Declaration

(7) Upon a declaration that a cemetery is abandoned being registered in the appropriate land registry office, the municipality becomes the owner of the cemetery with all the rights and obligations in respect to the cemetery and the assets, funds and trust accounts related thereto that the previous owner had. Municipality becomes owner

(8) A declaration under this section may exempt the municipality being declared the owner from any provision of this Act or the regulations that it would be inappropriate, in the circumstances, for a new owner to be subject to. Exemptions

(9) Upon an application being made to declare a cemetery abandoned, the municipality within which the cemetery is situated is responsible for the maintenance of the cemetery until the application is disposed of. Maintenance

**61.** The Registrar may require any owner who has an interest in a cemetery that appears to be abandoned or neglected to maintain that cemetery as a condition of retaining a licence to own a cemetery or crematorium. Dual interest

#### ADMINISTRATION

**62.—(1)** There shall be a Registrar appointed for the purposes of this Act. Registrar

(2) There shall be one or more Deputy Registrars appointed who may exercise such powers and perform such duties of the Registrar as are delegated by the Registrar. Deputy Registrars

(3) The Registrar, Deputy Registrars and all other employees necessary for the administration of this Act shall be appointed under the *Public Service Act*. Application of R.S.O. 1980, c. 418



## Inspectors

**63.**—(1) The Registrar may appoint inspectors to carry out inspections for the purpose of determining whether there is compliance with this Act and the regulations.

## Certificate of appointment

(2) An inspector exercising a power under this Act shall, on request, produce his or her certificate of appointment.

## Inspections

**64.**—(1) For the purpose of ensuring compliance with this Act and the regulations, an inspector may,

- (a) enter any place at any reasonable time;
- (b) request the production for inspection of documents or things that may be relevant to the inspection;
- (c) inspect and, upon giving a receipt therefor, remove documents or things relevant to the inspection for the purpose of making copies or extracts;
- (d) inquire into negotiations, transactions, loans or borrowings of a licensee and into assets owned, acquired or disposed of by a licensee that are relevant to an inspection;
- (e) conduct such tests as are reasonably necessary to determine the integrity of a structure, fence or marker in a cemetery; and
- (f) remove materials or substances for examination or test purposes subject to the licensee or other occupant of the premises being notified thereof.

## Entry to dwellings

(2) Subsection (1) does not apply to confer a power of entry to a room actually used as a dwelling without the consent of the occupier.

## Warrant

(3) A justice of the peace may issue a warrant authorizing the person named in the warrant,

- (a) to do anything set out in clause (1) (a), (c), (e) or (f);
- (b) to enter and search a room actually used as a dwelling; or
- (c) to search for and seize any document or thing relevant to the inspection.



- (4) A warrant may be issued under subsection (3) if the justice of the peace is satisfied on information under oath that in the case of a warrant to be issued under, Requirements for warrant to issue
- (a) clause (3) (a), an inspector has been prevented from doing anything permitted under clause (1) (a), (c), (e) or (f) or there is reasonable ground to believe that an inspector may be prevented from doing any of those things;
  - (b) clause (3) (b), it is necessary that a room actually used as a dwelling be entered for the purposes of carrying out an inspection or there is, in such a room, a document or thing that there is reasonable ground to believe is relevant to an inspection under this Act; or
  - (c) clause (3) (c), it is necessary to search for and seize a document or thing that there is reasonable ground to believe will afford evidence relevant to a contravention of this Act or the regulations.
- (5) A warrant issued under this section shall specify the hours and days during which it may be executed. Execution of warrant
- (6) Unless renewed, a warrant under this section expires not later than thirty days after the date on which it is made. Expiry
- (7) A warrant under this section may be issued or renewed upon application without notice. Notice not required
- (8) A warrant under this section may be renewed for any reason for which it may be issued. Renewal of warrant
- (9) A person doing anything under the authority of a warrant issued under this section is authorized to call on such police officers to assist and to use such force as is necessary in the execution of the warrant. Assistance
- (10) An inspector carrying out an inspection, with or without a warrant, may be accompanied by such persons with expertise in the subject-matter of the inspection as the inspector considers necessary. Use of experts
- (11) An investigator taking material in order to copy it shall make the copy with reasonable dispatch and shall promptly return the material taken. Copies
- (12) Copies of, or extracts from, documents and things removed under this section and certified as being true copies Admissibility of copies

of, or extracts from, the originals by the person who made them are admissible in evidence to the same extent as, and have the same evidentiary value as, the documents or things of which they are copies or extracts.

Obstruction  
of inspector

**65.**—(1) No person shall obstruct an inspector in carrying out an inspection under this Act or withhold, destroy, conceal or refuse to provide any relevant information or thing required for the purpose of the inspection.

Facilitating  
inspection

(2) It is a condition of each licence issued under this Act that the licensee facilitate an inspection relevant to that licence.

Freezing  
assets

**66.**—(1) If the Director has reasonable and probable grounds to believe that the owner of a cemetery or crematorium is doing or is about to do something that will jeopardize the public interest or the proper care and maintenance of a cemetery, the Director may direct any person holding, having on deposit or controlling assets of the owner or trust funds under the control of the owner to hold the assets or trust funds until further instructions are received from the Director to release a particular asset or trust fund from the direction.

Scope of  
direction

(2) In the case of a bank or a corporation, a direction under subsection (1) applies only to the offices, branches or agencies thereof named in the direction.

Application  
for directions

(3) Any person named in a direction issued under subsection (1), if in doubt as to the application of the direction to particular assets or trust funds, may apply to the Director for an order of clarification.

Revocation  
or  
amendment  
of direction

(4) On an application of the owner or any other person having an interest therein, the Director may make an order on such conditions as are set out in the order revoking the direction or consenting to the release of a particular asset or trust fund from the direction.

Appeal

(5) Any person affected by a direction or order of the Director made under this section or a refusal to make an order may appeal to the Tribunal.

Restraining  
order

**67.**—(1) If the Director is of the opinion that any person is not complying with this Act or the regulations, despite the imposition of any penalty in respect of the non-compliance and in addition to any other remedy available, the Director may apply to a judge of the High Court for an order directing the person to comply.

(2) Upon an application under subsection (1), the judge <sup>Idem</sup> may make the order applied for or such other order as the judge thinks appropriate.

(3) An appeal lies to the Divisional Court from an order <sup>Idem</sup> made under subsection (2).

#### BURIAL SITES

**68.** No person shall disturb or order the disturbance of a <sup>Disturbing burial site prohibited</sup> burial site or artifacts associated with the human remains except,

(a) on instruction by the coroner; or

(b) pursuant to a site disposition agreement.

**69.** Any person discovering or having knowledge of a <sup>Unmarked burial sites</sup> burial site shall immediately notify the police or coroner.

**70.—**(1) The Registrar may order the owner of land on <sup>Investigation</sup> which a burial site is discovered to cause an investigation to be made to determine the origin of the site.

(2) Section 68 does not apply to a person investigating the <sup>Idem</sup> nature or origin of the site who is disturbing the site in the course of the investigation.

(3) A person conducting an investigation shall do so with <sup>Idem</sup> the minimum disturbance to the site that is reasonable in the circumstances.

(4) If the Registrar is of the opinion that an investigation <sup>Idem</sup> under subsection (1) would impose an undue financial burden on the land owner, the Registrar shall undertake the investigation.

**71.—**(1) As soon as the origin of a burial site is deter- <sup>Declaration</sup> mined, the Registrar shall declare the site to be,

(a) an unapproved aboriginal peoples cemetery;

(b) an unapproved cemetery; or

(c) an irregular burial site.

(2) For the purpose of subsection (1),

<sup>Interpretation</sup>

- (a) an irregular burial site is a burial site that was not set aside with the apparent intention of interring therein human remains;
- (b) an unapproved cemetery is land set aside with the apparent intention of interring therein, in accordance with cultural affinities, human remains and containing remains identified as those of persons who were not one of the aboriginal peoples of Canada;
- (c) an unapproved aboriginal peoples cemetery is land set aside with the apparent intention of interring therein, in accordance with cultural affinities, human remains and containing remains identified as those of persons who were one of the aboriginal peoples of Canada.

## Definition

(3) For the purposes of this section and section 72, “unapproved” means not approved in accordance with this Act or a predecessor of this Act.

## Site disposition agreement

**72.**—(1) The Registrar, on declaring a burial site to be an unapproved aboriginal peoples cemetery or an unapproved cemetery, shall serve notice of the declaration on such persons or class of persons as are prescribed.

## Idem

(2) All persons served with notice under subsection (1) shall enter into negotiations with a view of entering into a site disposition agreement.

## Idem

(3) If a site disposition agreement is not made within the prescribed time, the Registrar shall refer the matter to arbitration.

## Idem

(4) Despite subsection (3), the Registrar, if of the opinion that an agreement may be reached, may defer referring the matter to arbitration so long as there appears to be a reasonable prospect of an agreement being reached.

## Arbitrated settlement

**73.** The persons named in an arbitrated settlement who have been given the opportunity to fully participate in the arbitration process are bound by the settlement whether they chose to participate or not.

## Irregular burial site

**74.**—(1) An owner of land that contains an irregular burial site shall ensure that the remains found in the site are interred in a cemetery.



(2) No owner of a cemetery interring human remains for an owner of land to whom this section applies may charge more than the prescribed amount for the interment. Charges

**75.**—(1) No person shall alter or move the remains or marker of a Canadian or Allied veteran or a Commonwealth War Burial without the agreement of the Department of Veterans Affairs (Federal), the Commonwealth War Graves Commission or such other persons and associations as are prescribed. War Graves

(2) Subsection (1) applies with respect to the alteration or removal of the remains or a marker of a Canadian or Allied veteran only if the Department of Veterans Affairs (Federal) contributed to the cost of the interment. Idem

(3) If an agreement is not reached, the person who wants to make the alteration or move may apply to the Registrar for directions. Idem

(4) When an application is made under subsection (3), the Registrar shall instruct the applicant to give notice of the application to such persons and associations as the Registrar considers may have an interest in the matter. Idem

(5) All persons and associations receiving a notice under subsection (4) may make submissions on the matter to the Registrar in such form and manner as the Registrar instructs. Idem

(6) After considering all submissions made, the Registrar shall direct the applicant on the manner of dealing with the remains or marker in question. Idem

(7) Subsection (1) does not apply to a person altering or moving remains or markers in accordance with the direction of the Registrar. Idem

**76.**—(1) The Lieutenant Governor in Council may make regulations, Regulations

1. prescribing documents, information and notices to be provided in the course of an application;
2. prescribing fees and requiring the payment of fees;
3. providing for the manner in which a deposit required for approval shall be applied or returned;
4. prescribing classes of cemeteries;



5. prescribing, for any notice required to be given under this Act, the type of notice and the manner in which it is to be given;
6. prescribing requirements and standards for the placing and spacing of interments, markers, fixtures, fences or other structures in a cemetery;
7. prescribing the minimum depth of coverage for in-ground burials;
8. prescribing the drains, sewers and other structures for the flow of water required in a cemetery;
9. governing mausolea, columbaria and other structures on or in a cemetery and establishing construction standards;
10. prescribing classes and types of licences;
11. governing the issue of licences and providing for the renewal of licences;
12. governing the term during which each class or type of licence is valid;
13. prescribing conditions that attach to any class or type of licence;
14. providing for posting of bonds and prescribing the amounts thereof;
15. providing for the forfeiture of posted bonds and for the distribution of the proceeds of forfeited bonds;
16. prescribing practices or actions that are evidence of incompetence or lack of honesty and integrity;
17. requiring the approval of the Registrar for promotional and sales material and prescribing the criteria for approval;
18. prescribing the type of promotional and sales material that requires the approval of the Registrar and providing for its submission to the Registrar;
19. governing and prohibiting the use of any promotional or sales material or any practice;

20. prescribing records and information to be kept by licensees;
21. providing for and requiring the submission of records and information and providing for access by agents of the Registrar to records and information;
22. prescribing the form of and conditions to be included in contracts for the sale of interment rights and cemetery supplies and services;
23. prescribing the information to be supplied to purchasers of interment rights and cemetery supplies and services;
24. prescribing the form of and information to be included in certificates of interment rights;
25. prescribing information to be provided to the public, any person or any class of persons and prescribing the manner of providing that information;
26. governing advertising and the manner of soliciting business;
27. requiring the use of any prescribed forms;
28. governing the use of contracts and certificates;
29. governing the uses to which owners may apply income from Care and Maintenance Funds;
30. prescribing records and information on trust funds to be provided to purchasers of interment rights and pre-need supplies or services;
31. governing the establishment, maintenance and operation of trust funds including the Care and Maintenance Fund and the Pre-need Assurance Fund;
32. governing the payment of money into and out of trust funds including the time within which and the circumstance under which payments are to be made;
33. prescribing fees that may be retained by trustees in respect of any type of trust fund;
34. governing the interment, disinterment, disposition and removal of human remains;

35. governing the preparation of disinterred human remains for transportation including prescribing the design and material of container to be used;
36. prescribing standards for the construction, installation, stabilization and preservation of markers and other cemetery supplies and requiring compliance with the standards;
37. governing the standards of care and maintenance required for a cemetery;
38. governing the procedure for approving by-laws made by owners and for revoking any by-laws made by owners;
39. prescribing the criteria that the Registrar shall use in approving by-laws;
40. governing the manner of conducting cremations and dealing with cremated remains;
41. prescribing amounts to be deposited, in trust, to compensate for disposing of cremated remains and regulating the handling of the trust moneys;
42. governing the location and ownership of cemeteries and crematoria;
43. governing prices and the range of prices that may be included on price lists filed with the Registrar by owners;
44. prescribing procedures to be followed in dealing with burial sites and requiring that they be followed;
45. governing arbitration in the absence of a site disposition agreement and requiring compliance with prescribed procedure;
46. prescribing the subject-matters to be contained in a site disposition agreement or arbitration settlement and requiring their inclusion;
47. exempting any person or class of persons, any cemetery or class of cemetery or anything or class of thing from any provision of this Act or the regulations;

48. prescribing conditions subsequent or precedent for a prescribed exemption and providing that an exemption may be subject to the Registrar being satisfied that it is not contrary to the public interest;
49. prescribing what constitutes notice in any provision where notice is required to be given;
50. governing the time for giving any notice for which a time is not set out in this Act and delegating to the Registrar power to extend any prescribed time;
51. prescribing anything that is referred to in this Act as being prescribed.

(2) Any regulation may be general or specific or of limited application. Limitation

**77.** No person shall cause or commit a nuisance in a cemetery or wilfully and unlawfully disturb persons assembled for the purpose of interring human remains in a cemetery. Interfering with cemetery

**78.—(1)** Any person who, in a cemetery, damages or moves any tree, plant, marker, fence, structure or other thing usually erected, planted or placed in a cemetery is liable to the cemetery owner and any interment rights holder who, as a result, incurs damage. Cause of action

(2) In an action under subsection (1), the amount of damages shall be the amount required to restore the cemetery to the state that it was in before anything was damaged or moved by the person liable. Idem

(3) Any person collecting damages under this section shall use the full amount collected to restore the cemetery. Idem

**79.—(1)** Every person who, Offence

- (a) furnishes false, misleading or incomplete information in an application under this Act or in a statement or return required to be furnished under this Act or the regulations;
- (b) fails to comply with an order made under this Act; or
- (c) contravenes any provision of this Act or the regulations,

is guilty of an offence.

Idem (2) Every director or officer of a corporation who concurs in an offence under this Act is guilty of an offence.

Idem (3) An individual who is convicted of an offence under this Act is liable to a fine of not more than \$20,000 and, on a subsequent conviction, to a fine of not more than \$20,000 and to imprisonment for a term of not more than one year.

Idem (4) A corporation that is convicted of an offence under this Act is liable to a fine of not more than \$40,000.

Limitation (5) Subject to subsection (6), no proceeding under this section shall be commenced more than two years after the offence was committed.

Idem (6) No proceeding under clause (1) (a) or subsection 35 (2) or 36 (3) or section 68 shall be commenced more than one year after the facts upon which the proceeding is based first came to the knowledge of the Registrar.

Restitution (7) If a person is convicted of an offence under this Act, the court making the conviction may, in addition to any other penalty, order the person convicted to make compensation or restitution in relation thereto.

Certificate as  
evidence

**80.** A statement as to,

- (a) the consent or lack of consent to establish, alter or increase the capacity of a cemetery or crematorium;
- (b) the licensing or non-licensing of any person;
- (c) the filing or non-filing of any document or material required or permitted to be filed with the Registrar;
- (d) the time when the facts upon which proceedings are based first came to the knowledge of the Registrar;  
or
- (e) any other matter pertaining to licensing, non-licensing, filing or non-filing,

purporting to be certified by the Registrar is, without proof of the office or signature of the Registrar, admissible in evidence in any proceeding, in the absence of evidence to the contrary, of the facts stated therein.

Municipal  
powers

**81.—**(1) A municipality may expropriate,



- (a) a cemetery or part thereof, whether the cemetery exists within or outside the municipality; and
- (b) land on which to establish or enlarge a cemetery.

(2) The council of a municipality may pass by-laws author- Idem  
izing,

- (a) the purchase of a cemetery or part thereof that is situated within the municipality;
- (b) the acquisition of land within the municipality or in an adjacent township or unorganized territory for a cemetery or for the enlargement of an existing cemetery owned by the municipality; or
- (c) the sale, transfer or lease of a cemetery or part thereof.

**82.**—(1) If there is an appeal under this Act to the Tribunal  
Tribunal, it shall appoint a time for and hold a hearing.

(2) After holding a hearing, the Tribunal may by order Order  
direct the Registrar to take an intended action or to refrain from taking an action or to take such action as the Tribunal considers that the Registrar ought to take and for such purposes the Tribunal may substitute its opinion for that of the Registrar.

(3) The Tribunal may attach such conditions to its order or Conditions  
to the licence as it considers proper to give effect to the purposes of this Act.

(4) The Registrar, the applicant or licensee who has Parties  
required the hearing and such other persons as the Tribunal may specify are parties to proceedings before the Tribunal under this Act.

**83.**—(1) A notice, order or other document under this Service  
Act or the regulations is sufficiently given, served or delivered if delivered personally or sent by first class mail addressed to the person to whom it is to be given, served or delivered at that person's last known address.

(2) A notice, order or other document sent by first class Idem  
mail in accordance with subsection (1) shall be deemed to be given, served or delivered on the fifth day after the day of mailing, unless the person to whom it is sent establishes that the notice, order or other document was not received until a

later date because of absence, accident, illness or other cause beyond that person's control.

Stay

R.S.O. 1980,  
c. 274

**84.** Despite the fact that a licensee appeals from an order of the Tribunal under section 11 of the *Ministry of Consumer and Commercial Relations Act*, the order takes effect immediately but the Tribunal may grant a stay until the disposition of the appeal.

Surrender of  
licence

**85.** The Registrar may, at any time, cancel a licence upon the written request of the licensee and the surrender of the licence by the licensee.

Transition

**86.—(1)** An approval given under the *Cemeteries Act*, being chapter 59 of the Revised Statutes of Ontario, 1980, shall be deemed to be a consent given under this Act.

Idem

(2) Every person who is an owner on the day this Act comes into force shall be deemed to be licensed under this Act to own the cemetery or crematorium.

Idem

(3) Every person who was employed as a sales representative selling interment rights, cemetery supplies or cemetery services on the day this Act comes into force shall be deemed to be licensed as a sales representative under this Act representing the owner employing that person.

Idem

(4) Subject to subsection (5), subsections (2) and (3) cease to apply one year after this Act comes into force.

Idem

(5) If a person who is deemed, under subsection (2) or (3), to be licensed under this Act applies for a comparable licence under this Act within one year after this Act comes into force, the deemed licence remains in force until the application is finally disposed of.

Idem

(6) Funds set up under the *Cemeteries Act*, being chapter 59 of the Revised Statutes of Ontario, 1980, for,

(a) perpetual care shall be deemed to be a Care and Maintenance Fund; and

(b) pre-need supplies or services shall be deemed to be a Pre-need Assurance Fund.

Act prevails

**87.** This Act prevails over Part VI of the *Ontario Heritage Act*, being chapter 337 of the Revised Statutes of Ontario, 1980.

**88.** Section 1 of *The Toronto General Burying Grounds Act, 1977*, being chapter 110, is repealed and the following substituted therefor:

**1.** The Trustees of the Toronto General Burying Grounds may, in addition to its existing powers to acquire and hold land, acquire and hold land and may exercise all its corporate powers with reference thereto. Power to acquire land

**89.** The *Cemeteries Act*, being chapter 59 of the Revised Statutes of Ontario, 1980, is repealed. Repeal

**90.** This Act comes into force on a day to be named by proclamation of the Lieutenant Governor. Commencement

**91.** The short title of this Act is the *Cemeteries Act, 1989*. Short title









# Bill 32

## An Act to amend the Landlord and Tenant Act

Ms Bryden



*1st Reading*      June 12th, 1989  
*2nd Reading*  
*3rd Reading*  
*Royal Assent*

#### EXPLANATORY NOTE

The purpose of the Bill is to make void any provision in a tenancy agreement prohibiting a tenant from keeping a pet in a rented residential premises. An exception is provided in the case of rental of a condominium unit if the declaration for that condominium prohibits owners from keeping pets.

Bill 32

1989

An Act to amend the Landlord and Tenant Act

HER MAJESTY, by and with the advice and consent of the Legislative Assembly of the Province of Ontario, enacts as follows:

**1.** The *Landlord and Tenant Act*, being chapter 232 of the Revised Statutes of Ontario, 1980, is amended by adding thereto the following section:

**97a.**—(1) Any provision in a tenancy agreement prohibiting a tenant from keeping a pet in residential premises is void.

Provisions  
restricting  
pets void

(2) Subsection (1) does not apply to a tenancy agreement in respect of a unit of a corporation to which the *Condominium Act* applies if the declaration for that corporation prohibits the keeping of pets in units of the corporation.

Exception  
R.S.O. 1980,  
c. 84

**2.** This Act comes into force on the day it receives Royal Assent.

Commence-  
ment

**3.** The short title of this Act is the *Landlord and Tenant Amendment Act, 1989*.

Short title





# Bill 33

## An Act to revise the Ontario Mineral Exploration Program Act

The Hon. S. Conway  
*Minister of Mines*



*1st Reading*      June 15th, 1989  
*2nd Reading*  
*3rd Reading*  
*Royal Assent*

#### EXPLANATORY NOTE

The purpose of the Bill is to provide for the establishment of incentive programs for the exploration and development of mineral resources in Ontario. The Bill replaces the existing Act. The Bill permits the Lieutenant Governor in Council to make regulations establishing incentive programs and prescribing eligibility conditions. Programs established under the Act will be administered by the Minister of Mines.

**Bill 33****1989**

**An Act to revise the  
Ontario Mineral Exploration Program Act**

HER MAJESTY, by and with the advice and consent of the Legislative Assembly of the Province of Ontario, enacts as follows:

**1.** In this Act,

Definitions

“development” means preparing a deposit of a prescribed mineral resource for production;

“exploration” means prospecting or exploring for a prescribed mineral resource;

“incentive” means a grant, loan, payment or other financial concession made under this Act;

“incentive program” means a program prescribed under this Act to encourage exploration or development in Ontario;

“Minister” means the Minister of Mines;

“Ministry” means the Ministry of the Minister;

“prescribed” means prescribed by the regulations;

“project” means a project of exploration or development in Ontario;

“regulations” means the regulations made under this Act.

**2.** The Lieutenant Governor in Council may make regulations to establish incentive programs.

Incentive programs

**3.** The Minister may designate a project under an incentive program for a specified period.

Designation of project

**4.** The Minister may provide an incentive to any person who,

Incentives

(a) is ordinarily resident in Canada; and

(b) meets the prescribed eligibility conditions of an incentive program.

Incentive not  
assignable,  
etc.

**5.** An incentive under this Act may not be assigned, charged, attached, anticipated or given as security, and any transaction purporting to assign, charge, anticipate or give as security an incentive is void.

Information  
confidential

**6.—(1)** Except as provided in subsections (2), (3) and (4), all information obtained under this Act by an employee or agent of the Ministry is privileged and confidential and no such employee or agent shall knowingly communicate or allow to be communicated to any person not legally entitled thereto any such information, or allow any person not legally entitled to do so to inspect or have access to any statement or other writing containing such information.

Exception

(2) Any information referred to in subsection (1) obtained by an employee or agent of the Ministry in the administration of this Act may be communicated to an employee of,

(a) the Department of National Revenue of Canada; or

(b) the Ministry of Revenue or the Ministry of Treasury and Economics.

Idem

(3) The name of a person who has received incentives under this Act and the aggregate of incentives received by the person may be published or disclosed by the Minister.

Idem

(4) One year or more after the expiry of the designation of a project designated under this Act, the Minister may disclose any technical reports, maps, plans or other particulars of the project that were submitted with any application relating to the project.

Return of  
incentive  
where not  
entitled

**7.—(1)** A person who receives an incentive to which the person is not entitled or a payment in excess of an incentive to which the person is entitled shall forthwith return to the Minister the amount or excess amount, as the case may be.

Recovery of  
incentive  
where not  
entitled

(2) If a person receives an incentive to which the person is not entitled or a payment in excess of an incentive to which the person is entitled, the amount or excess amount, as the case may be, may be recovered in any court of competent jurisdiction as a debt due to the Crown in proceedings commenced at any time, and, where applicable, the amount of

any such indebtedness may be recovered in the manner provided for in the *Financial Administration Act*.

R.S.O. 1980,  
c. 161

8.—(1) Every person is guilty of an offence who,

Offence

- (a) knowingly furnishes false or misleading information in an application or statement required by this Act or the regulations;
- (b) knowingly fails to disclose any information that is required to be disclosed by this Act or the regulations;
- (c) knowingly contravenes subsection 7 (1); or
- (d) contravenes subsection 6 (1) or 12 (1).

(2) If a corporation commits an offence under this Act, every director or officer of the corporation who authorizes, permits or acquiesces in the commission of the offence is a party to and is guilty of an offence and on conviction is liable to the penalty provided for the offence whether or not the corporation has been prosecuted or convicted.

Director or  
officer of  
corporation

(3) An individual who is convicted of an offence under this Act is liable to a fine of not more than \$5,000.

Individual

(4) A corporation that is convicted of an offence under this Act is liable to a fine of not more than \$50,000.

Corporation

(5) No proceeding in respect of an offence under this Act shall be commenced more than five years after the offence was committed.

Limitation

9.—(1) The Minister may, for any purpose relating to the administration or enforcement of this Act, require from any person whose project has been designated under this Act any information, or the production of any document, within such reasonable time as is stipulated in the request.

Request for  
information  
or document

(2) If a person does not comply within a reasonable time with a request under subsection (1), the Minister may by written notice declare the person to be ineligible for incentives.

Loss of  
eligibility  
upon failure  
to comply

(3) For purposes of section 7, a person declared under subsection (2) to be ineligible for incentives shall be deemed not to be entitled to any incentives received in respect of the project to which the request under subsection (1) relates.

Return of  
incentive



Appointment  
of persons to  
make  
inspections

**10.**—(1) The Minister may appoint persons to make inspections under this Act.

Certificate of  
appointment

(2) A person appointed under subsection (1) exercising a power under this Act shall, on request, produce his or her certificate of appointment.

Inspections

**11.**—(1) For the purpose of ensuring compliance with this Act and the regulations, a person appointed under subsection 10 (1) may,

- (a) enter any place at any reasonable time where,
  - (i) any business associated with a project designated under this Act is carried on or any property relating to such a project is kept,
  - (ii) anything is done in connection with a business referred to in subclause (i), or
  - (iii) any document relating to a business referred to in subclause (i) is kept;
- (b) request the production for inspection of documents or things that may be relevant to the inspection;
- (c) examine or audit any document or thing produced in response to a request under clause (b);
- (d) upon giving a receipt therefor, remove from a place documents or things produced in response to a request under clause (b) for the purpose of making copies or extracts; and
- (e) examine any land, property, process or matter that may be relevant to the inspection.

Entry to  
dwellings

(2) Subsection (1) does not apply to confer a power of entry to a room actually used as a dwelling without the consent of the occupier except under the authority of a warrant issued under this section.

Warrant

(3) A justice of the peace may issue a warrant authorizing the person named in the warrant,

- (a) to do anything set out in clause (1) (a), (c), (d) or (e); or
- (b) to enter and search a room actually used as a dwelling.

(4) A warrant may be issued under subsection (3) if the justice of the peace is satisfied on information under oath that,

Requirements  
for warrant  
to issue

(a) in the case of a warrant to be issued under clause (3) (a), a person appointed under subsection 10 (1) has been prevented from doing anything permitted under clause (1) (a), (c), (d) or (e) or there is reasonable ground to believe that such a person may be prevented from doing any of those things; or

(b) in the case of a warrant to be issued under clause (3) (b), it is necessary that a room actually used as a dwelling be entered for the purposes of carrying out an inspection or there is, in such a room, a document or thing that there is reasonable ground to believe will afford evidence relevant to an inspection under this Act.

(5) A warrant issued under this section shall specify the hours and days during which it may be executed.

Execution of  
warrant

(6) Unless renewed, a warrant under this section expires not later than thirty days after the date on which it is made.

Expiry

(7) A warrant under this section may be issued or renewed upon application without notice.

Notice not  
required

(8) A warrant under this section may be renewed, before or after expiry, for any reason for which it may be issued.

Renewal of  
warrant

(9) A person doing anything under the authority of a warrant issued under this section is authorized to call on such police officers to assist and to use such force as is necessary in the execution of the warrant.

Assistance

(10) A person taking material in order to copy it shall make the copy with reasonable dispatch and shall promptly return the material taken.

Copies

(11) Copies of, or extracts from, documents and things removed under this section and certified as being true copies of, or extracts from, the originals by the person who made them are admissible in evidence to the same extent as, and have the same evidentiary value as, the documents or things of which they are copies or extracts.

Admissibility  
of copies

**12.—**(1) No person shall obstruct a person carrying out an inspection under this Act or withhold, destroy, conceal or refuse to provide any relevant information or thing required for the purpose of the inspection.

Obstruction

Facilitating  
inspection

(2) It is a condition of every project designated under this Act that the person who applied for designation of the project facilitate any inspection relating to the project.

Advisory  
committees

**13.**—(1) The Minister may appoint advisory committees to advise him or her on any matters relating to this Act.

Idem

(2) The Minister may fix the terms of reference of an advisory committee.

Idem

(3) The Minister may appoint the chairperson and members of an advisory committee and fix their remuneration and expenses.

Delegation of  
powers and  
duties

**14.** Where, under this Act, a power is granted to or vested in or a duty is imposed upon the Minister, the Minister may delegate in writing that power or the obligation to perform that duty to the Deputy Minister of Mines, to an employee of the Ministry or to any other public servant, subject to the conditions set out in the delegation.

Regulations

**15.**—(1) The Lieutenant Governor in Council may make regulations,

- (a) prescribing the eligibility conditions of any incentive program;
- (b) prescribing the evidence to be furnished by a person applying for an incentive or designation of a project;
- (c) prescribing anything that is referred to in this Act as prescribed;
- (d) defining any word or expression for the purposes of this Act and the regulations that has not already been expressly defined in this Act.

Regulations  
may be  
retroactive

(2) A regulation is, if it so provides, effective with reference to a period before it was filed.

General,  
specific or  
limited  
regulation

(3) Any regulation may be general or specific or of limited application.

Repeals

**16.** The *Ontario Mineral Exploration Program Act*, being chapter 346 of the Revised Statutes of Ontario, 1980 and section 46 of the *Equality Rights Statute Law Amendment Act, 1986*, being chapter 64, are repealed.

**17.** Despite section 16, the *Ontario Mineral Exploration Program Act*, being chapter 346 of the Revised Statutes of Ontario, 1980, continues to apply to any program of mineral exploration designated by the Minister under subsection 2 (1) of the said Act. Transition

**18.** This Act comes into force on the day it receives Royal Assent. Commence-  
ment

**19.** The short title of this Act is the *Ontario Mineral Exploration Program Act, 1989*. Short Title









2ND SESSION, 34TH LEGISLATURE, ONTARIO

38 ELIZABETH II, 1989

# Bill 33

(Chapter 40  
*Statutes of Ontario, 1989*)

## **An Act to revise the Ontario Mineral Exploration Program Act**

The Hon. S. Conway  
*Minister of Mines*



<i>1st Reading</i>	June 15th, 1989
<i>2nd Reading</i>	July 12th, 1989
<i>3rd Reading</i>	July 13th, 1989
<i>Royal Assent</i>	July 13th, 1989



**Bill 33**

**1989**

**An Act to revise the  
Ontario Mineral Exploration Program Act**

HER MAJESTY, by and with the advice and consent of the Legislative Assembly of the Province of Ontario, enacts as follows:

**1.** In this Act,

Definitions

“development” means preparing a deposit of a prescribed mineral resource for production;

“exploration” means prospecting or exploring for a prescribed mineral resource;

“incentive” means a grant, loan, payment or other financial concession made under this Act;

“incentive program” means a program prescribed under this Act to encourage exploration or development in Ontario;

“Minister” means the Minister of Mines;

“Ministry” means the Ministry of the Minister;

“prescribed” means prescribed by the regulations;

“project” means a project of exploration or development in Ontario;

“regulations” means the regulations made under this Act.

**2.** The Lieutenant Governor in Council may make regulations to establish incentive programs. Incentive programs

**3.** The Minister may designate a project under an incentive program for a specified period. Designation of project

**4.** The Minister may provide an incentive to any person who, Incentives



(a) is ordinarily resident in Canada; and

(b) meets the prescribed eligibility conditions of an incentive program.

Incentive not  
assignable,  
etc.

**5.** An incentive under this Act may not be assigned, charged, attached, anticipated or given as security, and any transaction purporting to assign, charge, anticipate or give as security an incentive is void.

Information  
confidential

**6.**—(1) Except as provided in subsections (2), (3) and (4), all information obtained under this Act by an employee or agent of the Ministry is privileged and confidential and no such employee or agent shall knowingly communicate or allow to be communicated to any person not legally entitled thereto any such information, or allow any person not legally entitled to do so to inspect or have access to any statement or other writing containing such information.

Exception

(2) Any information referred to in subsection (1) obtained by an employee or agent of the Ministry in the administration of this Act may be communicated to an employee of,

(a) the Department of National Revenue of Canada; or

(b) the Ministry of Revenue or the Ministry of Treasury and Economics.

Idem

(3) The name of a person who has received incentives under this Act and the aggregate of incentives received by the person may be published or disclosed by the Minister.

Idem

(4) One year or more after the expiry of the designation of a project designated under this Act, the Minister may disclose any technical reports, maps, plans or other particulars of the project that were submitted with any application relating to the project.

Return of  
incentive  
where not  
entitled

**7.**—(1) A person who receives an incentive to which the person is not entitled or a payment in excess of an incentive to which the person is entitled shall forthwith return to the Minister the amount or excess amount, as the case may be.

Recovery of  
incentive  
where not  
entitled

(2) If a person receives an incentive to which the person is not entitled or a payment in excess of an incentive to which the person is entitled, the amount or excess amount, as the case may be, may be recovered in any court of competent jurisdiction as a debt due to the Crown in proceedings commenced at any time, and, where applicable, the amount of

any such indebtedness may be recovered in the manner provided for in the *Financial Administration Act*.

R.S.O. 1980,  
c. 161

Offence

8.—(1) Every person is guilty of an offence who,

- (a) knowingly furnishes false or misleading information in an application or statement required by this Act or the regulations;
- (b) knowingly fails to disclose any information that is required to be disclosed by this Act or the regulations;
- (c) knowingly contravenes subsection 7 (1); or
- (d) contravenes subsection 6 (1) or 12 (1).

(2) If a corporation commits an offence under this Act, every director or officer of the corporation who authorizes, permits or acquiesces in the commission of the offence is a party to and is guilty of an offence and on conviction is liable to the penalty provided for the offence whether or not the corporation has been prosecuted or convicted.

Director or  
officer of  
corporation

(3) An individual who is convicted of an offence under this Act is liable to a fine of not more than \$5,000.

Individual

(4) A corporation that is convicted of an offence under this Act is liable to a fine of not more than \$50,000.

Corporation

(5) No proceeding in respect of an offence under this Act shall be commenced more than five years after the offence was committed.

Limitation

9.—(1) The Minister may, for any purpose relating to the administration or enforcement of this Act, require from any person whose project has been designated under this Act any information, or the production of any document, within such reasonable time as is stipulated in the request.

Request for  
information  
or document

(2) If a person does not comply within a reasonable time with a request under subsection (1), the Minister may by written notice declare the person to be ineligible for incentives.

Loss of  
eligibility  
upon failure  
to comply

(3) For purposes of section 7, a person declared under subsection (2) to be ineligible for incentives shall be deemed not to be entitled to any incentives received in respect of the project to which the request under subsection (1) relates.

Return of  
incentive

Appointment  
of persons to  
make  
inspections

**10.**—(1) The Minister may appoint persons to make inspections under this Act.

Certificate of  
appointment

(2) A person appointed under subsection (1) exercising a power under this Act shall, on request, produce his or her certificate of appointment.

Inspections

**11.**—(1) For the purpose of ensuring compliance with this Act and the regulations, a person appointed under subsection 10 (1) may,

- (a) enter any place at any reasonable time where,
  - (i) any business associated with a project designated under this Act is carried on or any property relating to such a project is kept,
  - (ii) anything is done in connection with a business referred to in subclause (i), or
  - (iii) any document relating to a business referred to in subclause (i) is kept;
- (b) request the production for inspection of documents or things that may be relevant to the inspection;
- (c) examine or audit any document or thing produced in response to a request under clause (b);
- (d) upon giving a receipt therefor, remove from a place documents or things produced in response to a request under clause (b) for the purpose of making copies or extracts; and
- (e) examine any land, property, process or matter that may be relevant to the inspection.

Entry to  
dwellings

(2) Subsection (1) does not apply to confer a power of entry to a room actually used as a dwelling without the consent of the occupier except under the authority of a warrant issued under this section.

Warrant

(3) A justice of the peace may issue a warrant authorizing the person named in the warrant,

- (a) to do anything set out in clause (1) (a), (c), (d) or (e); or
- (b) to enter and search a room actually used as a dwelling.

(4) A warrant may be issued under subsection (3) if the justice of the peace is satisfied on information under oath that,

Requirements  
for warrant  
to issue

(a) in the case of a warrant to be issued under clause (3) (a), a person appointed under subsection 10 (1) has been prevented from doing anything permitted under clause (1) (a), (c), (d) or (e) or there is reasonable ground to believe that such a person may be prevented from doing any of those things; or

(b) in the case of a warrant to be issued under clause (3) (b), it is necessary that a room actually used as a dwelling be entered for the purposes of carrying out an inspection or there is, in such a room, a document or thing that there is reasonable ground to believe will afford evidence relevant to an inspection under this Act.

(5) A warrant issued under this section shall specify the hours and days during which it may be executed.

Execution of  
warrant

(6) Unless renewed, a warrant under this section expires not later than thirty days after the date on which it is made.

Expiry

(7) A warrant under this section may be issued or renewed upon application without notice.

Notice not  
required

(8) A warrant under this section may be renewed, before or after expiry, for any reason for which it may be issued.

Renewal of  
warrant

(9) A person doing anything under the authority of a warrant issued under this section is authorized to call on such police officers to assist and to use such force as is necessary in the execution of the warrant.

Assistance

(10) A person taking material in order to copy it shall make the copy with reasonable dispatch and shall promptly return the material taken.

Copies

(11) Copies of, or extracts from, documents and things removed under this section and certified as being true copies of, or extracts from, the originals by the person who made them are admissible in evidence to the same extent as, and have the same evidentiary value as, the documents or things of which they are copies or extracts.

Admissibility  
of copies

**12.—**(1) No person shall obstruct a person carrying out an inspection under this Act or withhold, destroy, conceal or refuse to provide any relevant information or thing required for the purpose of the inspection.

Obstruction



Facilitating  
inspection

(2) It is a condition of every project designated under this Act that the person who applied for designation of the project facilitate any inspection relating to the project.

Advisory  
committees

**13.**—(1) The Minister may appoint advisory committees to advise him or her on any matters relating to this Act.

Idem

(2) The Minister may fix the terms of reference of an advisory committee.

Idem

(3) The Minister may appoint the chairperson and members of an advisory committee and fix their remuneration and expenses.

Delegation of  
powers and  
duties

**14.** Where, under this Act, a power is granted to or vested in or a duty is imposed upon the Minister, the Minister may delegate in writing that power or the obligation to perform that duty to the Deputy Minister of Mines, to an employee of the Ministry or to any other public servant, subject to the conditions set out in the delegation.

Regulations

**15.**—(1) The Lieutenant Governor in Council may make regulations,

- (a) prescribing the eligibility conditions of any incentive program;
- (b) prescribing the evidence to be furnished by a person applying for an incentive or designation of a project;
- (c) prescribing anything that is referred to in this Act as prescribed;
- (d) defining any word or expression for the purposes of this Act and the regulations that has not already been expressly defined in this Act.

Regulations  
may be  
retroactive

(2) A regulation is, if it so provides, effective with reference to a period before it was filed.

General,  
specific or  
limited  
regulation

(3) Any regulation may be general or specific or of limited application.

Repeals

**16.** The *Ontario Mineral Exploration Program Act*, being chapter 346 of the Revised Statutes of Ontario, 1980 and section 46 of the *Equality Rights Statute Law Amendment Act, 1986*, being chapter 64, are repealed.



**17.** Despite section 16, the *Ontario Mineral Exploration Program Act*, being chapter 346 of the Revised Statutes of Ontario, 1980, continues to apply to any program of mineral exploration designated by the Minister under subsection 2 (1) of the said Act. Transition

**18.** This Act comes into force on the day it receives Royal Assent. Commence-  
ment

**19.** The short title of this Act is the *Ontario Mineral Exploration Program Act, 1989*. Short title







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# Bill 34

## An Act to amend the District Municipality of Muskoka Act and the Education Act

The Hon. J. Eakins  
*Minister of Municipal Affairs*



*1st Reading*      June 19th, 1989  
*2nd Reading*  
*3rd Reading*  
*Royal Assent*



## EXPLANATORY NOTES

The purpose of the Bill is to provide for the establishment of uniform upper tier and school mill rates throughout the District Area.

The District Municipality of Muskoka will be required to establish each year one uniform residential and farm mill rate and one uniform commercial mill rate to apply throughout the District Area. Each of the school boards operating within the District will also establish uniform residential and farm and uniform commercial mill rates to apply within their particular area of jurisdiction. In order to accomplish this purpose, it is necessary to introduce complementary amendments to the *Education Act*.

The Bill will also require that the portion of payment in lieu of taxes and telephone and telegraph payments received by each area municipality that relate to the requirements of the District Municipality and the school boards shall be paid directly to those bodies.

The Bill will also require that the Ministry of Revenue conduct an update of the assessment base in 1992 and at least every four years thereafter to reflect the subsequent changes in market value.

Subsections 214 (17) and 214b (4) of the *Education Act*, concerning the apportionment of sums required by public school and separate school boards, are also amended in connection with school boards with jurisdiction within The Regional Municipality of Waterloo.

**Bill 34**

**1989**

**An Act to amend the District Municipality  
of Muskoka Act and the Education Act**

HER MAJESTY, by and with the advice and consent of the Legislative Assembly of the Province of Ontario, enacts as follows:

**1. Section 71 of the *District Municipality of Muskoka Act*, being chapter 121 of the Revised Statutes of Ontario, 1980, is repealed and the following substituted therefor:**

**71.** In this Part,

Definitions

“commercial assessment” means the total, according to the last returned assessment roll, of,

- (a) the assessment of real property that is used as the basis for computing business assessment including the assessment for real property that is rented and occupied or used by the Crown in right of Canada or any province or any board, commission, corporation or other agency thereof, or by any municipal corporation or the District Corporation or local board thereof,
- (b) business assessment, and
- (c) the assessment for mineral lands, pipe lines and railway lands, other than railway lands actually in use for residential and farming purposes;

“district rating by-law” means a by-law passed under subsection 74 (2);

“public school board” means a divisional board, as defined in paragraph 19 of subsection 1 (1) of the *Education Act*, that has jurisdiction in the District Area;

R.S.O. 1980,  
c. 129

“rateable property” includes business and other assessment made under the *Assessment Act*;

R.S.O. 1980,  
c. 31

“residential and farm assessment” means the total assessment for real property according to the last returned assessment roll except the assessments for real property mentioned in clauses (a) and (c) of the definition of “commercial assessment”;

R.S.O. 1980,  
c. 129 “separate school board” means a separate school board, as defined in paragraph 59a of subsection 1 (1) of the *Education Act*, that has jurisdiction in the District Area;

“weighted assessment” means, for the relevant area, the total of,

- (a) the product obtained by multiplying the residential and farm assessment by 85 per cent, and
- (b) the commercial assessment.

**2. Section 74 of the said Act, as amended by the Statutes of Ontario, 1984, chapter 45, section 14, and sections 75, 76, 77 and 78 are repealed and the following substituted therefor:**

Definition **74.—**(1) In this section, “general district levy” means a sum sufficient,

- (a) for payment of the estimated current annual expenditures as adopted under section 73; and
- (b) for payment of all debts of the District Corporation falling due within the year as well as amounts required to be raised for sinking funds and principal and interest payments or sinking fund requirements in respect of debenture debt of area municipalities for the payment of which the District Corporation is liable under this Act,

but excludes those amounts for water and sewage purposes that are to be raised by a special rate or rates in accordance with sections 24 and 25.

District  
rating by-law

(2) For purposes of raising the general district levy, the District Council, on or before the 30th day of June in 1989 and on or before the 31st day of March in each subsequent year, shall pass a by-law directing the council of each area municipality to levy a separate rate, as specified in the by-law, on the residential and farm assessment in the area municipality rateable for district purposes and on the commercial assessment in the area municipality rateable for district purposes.

(3) The rate that the District Council shall direct to be levied in each year on commercial assessment under subsection (2) shall be determined by multiplying the general district levy by 1,000 and dividing the product by the weighted assessments for all the area municipalities.

Determina-  
tion of  
commercial  
rate

(4) The rate that the District Council shall direct to be levied on the residential and farm assessment under subsection (2) shall be 85 per cent of the rate that it directs to be levied on commercial assessment.

Determina-  
tion of  
residential  
rate

(5) In each year, the council of each area municipality shall levy, in accordance with the district rating by-law passed for that year, the rates specified in the by-law.

Area muni-  
cipality to  
adopt rates

(6) The assessment for real property that is exempt from taxation for district purposes by virtue of any Act or by virtue of a by-law passed by the council of an area municipality under any Act shall not be included when determining the total of the weighted assessment for the purposes of subsection (3).

Tax-exempt  
real property

(7) The full value of all rateable property shall be used in determining,

Full value to  
be used

(a) the rates to be levied under subsections (3) and (4); and

(b) the assessment on which the levy shall be made under subsection (5),

and, notwithstanding any other Act, but subject to section 22 of the *Assessment Act*, no fixed assessment applies thereto.

R.S.O. 1980,  
c. 31

(8) A district rating by-law shall specify the amount to be raised in an area municipality as a result of a levy being made in that area municipality in accordance with the by-law and the by-law,

Instalment  
and advance  
payments

(a) may require specified portions of that amount to be paid to the treasurer of the District Corporation on or before specified dates; and

(b) may provide that the District Corporation shall pay interest at a rate to be determined by the District Council on any payment required, or portion thereof, made in advance by any area municipality.

(9) The amount specified to be raised in an area municipality pursuant to a district rating by-law shall be deemed to be

Payment



taxes and is a debt of the area municipality to the District Corporation and the treasurer of the area municipality shall pay the amount owing by the area municipality to the treasurer of the District Corporation on or before the dates and in the portions specified in the district rating by-law.

Default

(10) If an area municipality fails to make any payment, or portion thereof, as provided in the district rating by-law, the area municipality shall pay to the District Corporation interest on the amount in default at the rate of 15 per cent per annum from the due date of the payment, or such lower rate as the District Council may by by-law determine, from the date payment is due until it is made.

Extension of  
time

(11) The Minister by order may extend the time for passing a district rating by-law in any year and such an order may be made notwithstanding that the time limit set out in subsection (2) has expired.

Determina-  
tion of  
school rates

**74a.**—(1) In each year, The Muskoka Board of Education, The Nipissing District Roman Catholic Separate School Board, The Simcoe County Roman Catholic Separate School Board and The West Parry Sound Board of Education shall determine for the part of an area municipality which is within the area of jurisdiction of the board the rates to be levied by the applicable area municipality to provide the sums required for elementary and secondary school purposes, as the case may be, in that year and shall specify the amount that is to be provided in that year by the application of those rates.

Idem

R.S.O. 1980,  
c. 129

(2) The determinations required by subsection (1) shall be made in accordance with subsection 222 (1) of the *Education Act*.

Direction to  
area municipi-  
palities

(3) On or before the 1st day of March in each year, The Muskoka Board of Education, The Nipissing District Roman Catholic Separate School Board, The Simcoe County Roman Catholic Separate School Board and The West Parry Sound Board of Education shall direct the council of each applicable area municipality to levy the rates determined by the particular board under subsection (1) in respect of the area municipality or the part thereof which is within the area of jurisdiction of the board and shall advise the area municipality of the amount of money to be raised by levying those rates.

Area municipi-  
pality to levy  
and collect

(4) In each year, the council of an area municipality shall levy rates in accordance with the directions under subsection (3) upon all property in the area municipality rateable for public school board or separate school board purposes, as may be appropriate.



(5) The full value of all applicable rateable property shall be used in determining, Full value to be used

(a) the weighted assessment for each area municipality for purposes of apportioning among the applicable area municipalities the sums required for school purposes by the school boards mentioned in subsection (3);

(b) the rates mentioned in subsection (1); and

(c) the assessment upon which the rates are to be levied under sections 128, 133 and 215 of the *Education Act*, R.S.O. 1980, c. 129, 31

and notwithstanding any other Act, but subject to section 22 of the *Assessment Act*, no fixed assessment applies thereto.

(6) For the purposes of determining and levying rates under this section, a reference in the *Education Act* to “commercial assessment” or “residential and farm assessment” shall be deemed to be a reference to such assessments as defined in this Part and not as defined in section 220 of that Act. Definitions in R.S.O. 1980, c. 129, s. 220

(7) Subsection 219 (2) of the *Education Act* does not apply to the determination of rates under subsection (1). Non-application of R.S.O. 1980, c. 129, s. 219 (2)

(8) Except as provided in this section, the *Education Act* continues to apply to the levying of rates and collecting of taxes for each public school board and separate school board having jurisdiction in part of the District Area. Application of R.S.O. 1980, c. 129

**74b.—(1)** In this section,

Definitions

“area municipality levy” means the amount required for area municipality purposes under section 164 of the *Municipal Act*, including the sums required for any board, commission or other body, but excluding those amounts required to be raised for district and school purposes; R.S.O. 1980, c. 302

“special area municipality levy” means an amount to be raised by an area municipality that is not included in the area municipality levy, but excluding those amounts required to be raised for district and school purposes.

(2) The council of each area municipality, in each year in accordance with subsections (3) and (4), shall levy separate rates on the whole of the rateable commercial assessment and on the whole of the rateable residential and farm assessment Area municipality levies

in respect of the area municipality levy and the special area municipality levy.

Determina-  
tion of  
commercial  
rates

(3) The rates to be levied in each year on commercial assessment for each separate levy specified in subsection (2) shall be determined by multiplying the sum required for each such levy by 1,000 and dividing the product,

- (a) by the weighted assessment for the area municipality, in the case of an area municipality levy; and
- (b) by the weighted assessment determined on the basis of the assessment that is rateable for the purpose of raising the special area municipality levy, in the case of a special area municipality levy.

Determina-  
tion of  
residential  
rates

(4) The rates to be levied in each year on residential and farm assessment for each separate levy specified in subsection (2) shall be 85 per cent of the rate to be levied on commercial assessment in accordance with subsection (3).

Non-  
application of  
R.S.O. 1980,  
c. 302, s. 158  
and c. 359,  
s. 7

(5) Section 158 of the *Municipal Act* and section 7 of the *Ontario Unconditional Grants Act* do not apply to an area municipality.

Area muni-  
cipality levy

(6) A reference in any other Act to a levy by a local municipality under section 158 of the *Municipal Act* shall, with respect to an area municipality, be deemed to be a reference to a levy under this section.

Tax-exempt  
real property

(7) The assessment for real property that is exempt from taxation for area municipality purposes by virtue of any Act or by virtue of a by-law passed by the council of an area municipality under any Act shall not be included when determining the weighted assessment for purposes of clause (3) (a) or (b).

Interim  
financing,  
District  
Council

**74c.**—(1) The District Council, before the adoption of the estimates for the year, may by by-law requisition from each area municipality a sum not exceeding 50 per cent of the amount that under subsection 74 (8) was, in the district rating by-law for the preceding year, specified to be raised in the particular area municipality and subsections 74 (8), (9) and (10) apply with necessary modifications to the amount requisitioned.

Final  
instalment  
reduced

(2) The amount of any requisition made under subsection (1) in any year upon an area municipality shall be deducted when determining the amount of the portions to be paid in

that year by the area municipality to the treasurer of the District Corporation under the district rating by-law authorized by clause 74 (8) (a).

**74d.**—(1) The council of an area municipality may for any year, before the adoption of the estimates for the year, levy such rates as it may determine on the rateable commercial assessment and on the rateable residential and farm assessment in the area municipality.

Interim  
financing,  
area municipi-  
palities

(2) A by-law for levying rates under subsection (1) shall be passed in the year that the rates are to be levied or may be passed in December of the preceding year if it provides that it does not come into force until a specified day in the following year.

By-law in  
December of  
preceding  
year

(3) The rate that may be levied on any assessment under subsection (1) shall not exceed 50 per cent of the total of the rates that were levied or would have been levied on that assessment for all purposes in the preceding year.

Determi-  
nation of  
rate

(4) If the assessment roll for taxation in the current year has not been returned, the rate levied under subsection (1) may be levied on the assessment according to the assessment roll used for taxation purposes in the preceding year.

Assessment  
roll

(5) The amount of any levy made on an assessment under subsection (1) shall be deducted from the total amount levied on that assessment for that year under sections 74, 74a and 74b.

Interim levy  
deducted  
from final  
levy

(6) If the taxes levied on an assessment for real property or on a business assessment under this section exceed the taxes to be levied on that assessment for the year under sections 74, 74a and 74b, the treasurer of the area municipality shall, not later than twenty-one days following the giving of a notice of demand of taxes payable, refund to the person assessed that portion of the taxes paid in excess of the amount payable for the year pursuant to a levy made under sections 74, 74a and 74b.

Interim levy  
in excess of  
final levy

(7) The provisions of the *Municipal Act* with respect to the levy of rates and the collection of taxes apply with necessary modifications to the levy of rates and collection of taxes under this section.

Application  
of  
R.S.O. 1980,  
c. 302

**74e.** If a direction has been made under subsection 78 (1) that a new assessment roll be returned for taxation in the current year, the Minister by order,

Power of  
Minister

- (a) may prescribe the maximum sum that may be requisitioned from each area municipality under subsection 74c (1); and
- (b) may prescribe the maximum rates that may be levied by the council of each area municipality under subsection 74d (1).

## Definitions

**75.—(1)** In this section,

“payment in lieu of taxes” means an amount that an area municipality is eligible to receive under,

- R.S.O. 1980,  
c. 31 (a) subsection 26 (3), (4) or (5) of the *Assessment Act*,
- R.S.O. 1980,  
c. 209 (b) subsection 7 (6) of the *Housing Development Act*, but not including that portion payable to a school board in accordance with subsection 7 (10) of that Act,
- R.S.O. 1980,  
c. 302 (c) section 160 and subsection 160a (3) of the *Municipal Act*,
- R.S.O. 1980,  
c. 311 (d) subsection 4 (1), (2) or (3) of the *Municipal Tax Assistance Act*,
- R.S.O. 1980,  
c. 361 (e) section 42 of the *Ontario Water Resources Act*,
- R.S.O. 1980,  
c. 384 (f) subsection 46 (2), (3), (4) or (5) of the *Power Corporation Act*, but not including that portion payable to a school board in accordance with subsection 46 (9) of that Act,
- R.S.O. 1980,  
c. 510 (g) section 10 or 11 of the *Trees Act*,
- R.S.C. 1985,  
c. M-13 (h) the *Municipal Grants Act* (Canada), or
- (i) any Act of Ontario or of Canada or any agreement where the payment is from any government or government agency and is in lieu of taxes on real property or business assessment, but not including a payment referred to in sections 498 and 498a of the *Municipal Act*;

“taxes for district purposes” means the sum of the taxes levied by an area municipality for district purposes as specified in the district rating by-law under subsection 74 (2) and in respect of water and sewer purposes under sections 24 and 25, excluding any adjustments under section 32 or 33 of the *Assessment Act*;



“taxes for local purposes” means the taxes levied by an area municipality for local purposes under subsection 74b (2), excluding any adjustments under section 32 or 33 of the *Assessment Act*;

R.S.O. 1980,  
c. 31

“total taxes for all purposes” means the sum of the taxes for local purposes, the taxes for district purposes and the taxes levied by the area municipality for school purposes under subsection 74a (1), excluding any adjustments under section 32 or 33 of the *Assessment Act*.

(2) If an area municipality is eligible to receive a payment in lieu of taxes for any year, it shall pay to the treasurer of the District Corporation a portion equal to the amount obtained by multiplying the amount that the area municipality is eligible to receive by the quotient, correct to five decimal places, obtained by dividing the taxes for district purposes for the year by the total of,

Area municipalities to share payments in lieu of taxes

(a) the taxes for local purposes for the year; and

(b) the taxes for district purposes for the year.

(3) Notwithstanding subsection (2), if an area municipality is eligible to receive a payment in lieu of taxes for any year under,

Sharing of certain payments

(a) subsection 26 (3), (4) or (5) of the *Assessment Act*;

(b) section 42 of the *Ontario Water Resources Act*;

R.S.O. 1980,  
c. 361

(c) subsection 46 (2), (3), (4) or (5) of the *Power Corporation Act*, but not including that portion payable to a school board in accordance with subsection 46 (9) of that Act;

R.S.O. 1980,  
c. 384

(d) section 10 or 11 of the *Trees Act*; or

R.S.O. 1980,  
c. 510

(e) the *Municipal Grants Act* (Canada),

R.S.C. 1985,  
c. M-13

and the calculation of the payment is based in part on the rates that were levied for school purposes, then the portion to be paid under subsection (2) shall be calculated by multiplying the amount that the area municipality is eligible to receive by the quotient, correct to five decimal places, obtained by dividing the taxes for district purposes for the year by the total taxes for all purposes for the year.

(4) The treasurer of each area municipality shall, on or before the 1st day of March in each year, send a statement to

Treasurer to provide estimate of share



the treasurer of the District Corporation and each school board showing an estimate of the amount that the area municipality will be required to pay to the District Corporation for the year under subsection (2) and to each school board under subsection 7 (10) of the *Housing Development Act* and under subsection 46 (9) of the *Power Corporation Act*.

R.S.O. 1980,  
cc. 209, 384

Allocation of  
payments in  
lieu of taxes

(5) If an area municipality is required to pay a portion of a payment in lieu of taxes to the District Corporation under subsection (2), or to a school board, the provisions of,

R.S.O. 1980,  
c. 31

(a) subsections 26 (7) and (9) of the *Assessment Act*;

(b) subsection 7 (10) of the *Housing Development Act*;

R.S.O. 1980,  
c. 302

(c) subsections 160 (12) and (16) and subsection 160a (4) of the *Municipal Act*; and

(d) subsection 46 (7) of the *Power Corporation Act*,

with respect to the equalization of assessment or allocation and deposit of payments shall not apply to that entitlement.

Payment of  
portion of  
telephone  
and telegraph  
tax

**76.**—(1) Each area municipality shall pay a portion of the tax levied by it under subsections 161 (12) and (13) of the *Municipal Act* to the District Corporation and the appropriate public school boards in the proportion that the taxes levied by it on commercial assessment in the year for each such body bears to the total taxes levied by it in the year on commercial assessment for all purposes, other than separate school board purposes.

Exclusion of  
taxes added  
to collector's  
roll

(2) In determining the taxes levied on commercial assessment under subsection (1), there shall be excluded any adjustments under section 32 or 33 of the *Assessment Act*.

Statement by  
treasurer

(3) The treasurer of each area municipality shall, on or before the 1st day of March in each year, send a statement to the treasurer of the District Corporation and the appropriate public school boards showing an estimate of the amount which the area municipality will be required to pay to that body for the year under subsection (1).

Exclusion of  
R.S.O. 1980,  
c. 302,  
s. 161 (18-24)

(4) Subsections 161 (18) to (24) of the *Municipal Act* do not apply if payments are made by an area municipality under subsection (1).

Payment in  
lieu and  
telephone  
and telegraph  
levies

**77.**—(1) An amount payable by an area municipality to,

- (a) the District Corporation under subsection 75 (2) or 76 (1);
- (b) a public school board under subsection 76 (1); or
- (c) a school board under subsection 7 (10) of the *Housing Development Act* or under subsection 46 (9) of the *Power Corporation Act*,

R.S.O. 1980,  
cc. 209, 384

is a debt of the area municipality to the District Corporation or school board, as the case may be, and, subject to subsections (2) and (3), instalments are payable on account thereof as follows:

1. A first instalment of 25 per cent of the amount payable for the same purposes in the preceding year, on or before the 31st day of March.
2. A second instalment of 25 per cent of the amount payable for the same purposes in the preceding year, on or before the 30th day of June.
3. A third instalment of 25 per cent of the amount payable for the same purposes in the preceding year, on or before the 30th day of September.
4. A fourth instalment of the balance of the entitlement for the year, on or before the 15th day of December.

(2) The District Council may by by-law provide for an alternative number of instalments and due dates for amounts payable by area municipalities to the District Corporation under subsection (1).

Alternative  
payment  
schedule

(3) If a school board having jurisdiction within the District Area has established an agreement which applies to one or more area municipalities in accordance with subsection 215 (3) of the *Education Act*, the number of instalments and due dates specified in that agreement shall apply with necessary modifications to those amounts otherwise payable to the school board under subsection (1).

Idem

R.S.O. 1980,  
c. 129

(4) An amount payable by an area municipality under subsection 75 (2) or 76 (1) or under subsection 7 (10) of the *Housing Development Act* or under subsection 46 (9) of the *Power Corporation Act* shall be credited by the District Corporation or school board to its general revenues.

General  
revenues

R.S.O. 1980,  
cc. 209, 384

## Default

(5) If an area municipality fails to make any payment as provided under subsection (1) or as altered under subsection (2) or (3), the area municipality shall pay to the District Corporation or school board, as applicable, interest on the amount past due at the rate of 15 per cent per annum, or at such lower rate as the school board or District Corporation may by by-law determine from time to time.

## Overpayment

(6) If the total amount paid for the year under subsection (1), (2) or (3) exceeds the total amount payable for that purpose in the year, the area municipality shall notify the District Corporation or the school board, as the case may be, of the amount of the overpayment and the District Corporation or school board shall forthwith pay that amount to the area municipality.

District-wide  
assessment  
update

**78.—**(1) If the Minister of Revenue considers that any parcel or parcels of real property within the District Area are assessed inequitably with respect to the assessment of any other parcel or parcels of real property in the District Area, the Minister of Revenue may direct that such changes be made in the assessment to be contained in the assessment roll next to be returned for each area municipality as will, in the opinion of the Minister of Revenue, eliminate or reduce inequalities in the assessment of real property in the District Area.

Date for new  
assessment  
roll

(2) If a direction is made under subsection (1), the Minister of Revenue may, for that purpose, name a day upon which the assessment commissioner for the District Area shall return a new assessment roll for the assessment at market value of real property in all area municipalities in the District Area.

When  
direction  
effective

(3) A direction under subsection (1) is effective upon publication of a notice of the direction in *The Ontario Gazette*.

Application  
of new  
assessment  
roll

(4) If the assessment roll of an area municipality for taxation in any year is changed pursuant to a direction of the Minister of Revenue under subsection (1),

(a) the assessment roll to be returned for that area municipality for taxation in that year shall be the assessment roll as so changed and not the assessment roll that would otherwise have been returned; and

(b) the assessment roll to be returned in each year following that year shall be the assessment roll returned under clause (a) as amended, added to, or otherwise altered under the *Assessment Act* up to

the date when the assessment roll is returned in each such following year.

(5) Notwithstanding subsection (4), if the assessor is of the opinion that an assessment to be shown on the assessment roll to be returned is inequitable with respect to the assessment of similar real property in the vicinity, the assessor may alter the value of the assessment to the extent necessary to make the assessment equitable with the assessment of such similar real property.

Exception

(6) For the purpose of every Act, the assessment roll of an area municipality returned under subsection (4) shall be deemed to be the assessment roll of the area municipality returned under the *Assessment Act*.

Status of assessment roll

R.S.O. 1980, c. 31

(7) In 1992 for purposes of taxation in 1993, the Minister of Revenue shall make a direction under subsection (1) for changes to be made to the assessment rolls of the area municipalities.

Mandatory return of updated roll in 1992

(8) In every fourth year following the most recent direction under subsection (1), the Minister of Revenue shall make a direction under subsection (1) for changes to be made to the assessment rolls of the area municipalities.

Mandatory return of updated roll every fourth year

(9) The Minister of Revenue shall not make a direction under subsection (1) unless the District Council by resolution has requested that a direction be made, but a resolution is not required for a direction of the Minister of Revenue required under subsection (7) or (8).

Resolution required

(10) Except as provided in subsections (1) and (11), the *Assessment Act* and the alterations, corrections, additions and amendments authorized by that Act apply to an assessment roll returned under subsection (4).

Provisions of R.S.O. 1980, c. 31

(11) Subsections 63 (1) and (3) and sections 64 and 65 of the *Assessment Act* do not apply to an area municipality or to the assessment roll of any area municipality in respect of 1989 and subsequent years.

Idem

(12) The Assessment Review Board, the Municipal Board or any court, in determining the value at which any real property shall be assessed in any complaint, appeal, proceeding or action, shall have reference to the value at which similar real property in the vicinity is assessed, and the amount of any assessment of real property shall not be altered unless the Assessment Review Board, Municipal Board or court is satisfied that the assessment is inequitable with respect to the

Powers on appeal



assessment of similar real property in the vicinity, and in that event the assessment of the real property shall not be altered to any greater extent than is necessary to make the assessment equitable with the assessment of such similar real property.

No  
amendment  
to collector's  
roll  
R.S.O. 1980,  
c. 31

(13) No amendment shall be made to the assessment or a collector's roll under clause 33 (a) of the *Assessment Act* until the cumulative value of the increase since the date of the most recent change to the assessment roll under a direction of the Minister of Revenue under subsection (1) is at least in the sum of \$5,000 at market value.

Table of  
rates for pipe  
lines

(14) For purposes of subsection 24 (16) of the *Assessment Act*, changes made in the assessment roll of an area municipality under a direction of the Minister of Revenue under subsection (1) shall be deemed to be an assessment update of all property within the area municipality under section 70 of the *Assessment Act*.

Rights of  
appeal  
preserved

(15) Nothing in section 74, 74a or 74b in any way deprives any person of any right of appeal provided for in the *Assessment Act* or affects the operation of subsection 36 (6) of that Act.

Direction  
may be  
retroactive

(16) A direction made under subsection (1) may be made retroactive to the 1st day of December of the year preceding the year in which it was made.

**3. Subsection 82 (3) of the said Act is repealed and the following substituted therefor:**

Pollution  
control fund

(3) The District Council shall establish and maintain a pollution control fund and shall contribute to such fund, in each year, the sum equivalent to a sum calculated at one-quarter of one mill in the dollar upon the total residential and farm assessment and commercial assessment for all area municipalities in that year.

Transition  
R.S.O. 1980,  
cc. 302, 129

**4. Notwithstanding subsection 164 (2) of the *Municipal Act* or subsection 216 (2) of the *Education Act*, if the amount levied by an area municipality for district purposes or school purposes in 1988 differs from the sum the area municipality ought to have levied for district purposes or school purposes, the area municipality shall debit or credit such deficit or surplus, as applicable, to the general funds of the municipality and not revise the rates to be levied for such body in 1989.**

Transition

R.S.O. 1980,  
c. 121

**5.—(1) Nothing in this Act affects the validity of an interim levy made by the District Council or by the council of an area municipality under section 76 of the *District Municipality of***



*Muskoka Act* as it existed before the coming into force of this Act.

(2) Subsections 74 (8), (9) and (10), as re-enacted by section 2 of this Act, and subsection 74c (2), as enacted by section 2 of this Act, of the *District Municipality of Muskoka Act* apply with necessary modifications to an interim levy made by the District Council in 1989. Idem  
R.S.O. 1980,  
c. 121

(3) Subsections 74d (4), (5) and (6), as enacted by section 2 of this Act, of the *District Municipality of Muskoka Act* apply with necessary modifications to an interim levy made by an area municipality in 1989. Idem

**6.—**(1) Subsection 130 (10) of the *Education Act*, being chapter 129 of the Revised Statutes of Ontario, 1980, as re-enacted by the Statutes of Ontario, 1988, chapter 23, section 8, is repealed and the following substituted therefor:

(10) This section does not apply to The Haldimand-Norfolk Roman Catholic Separate School Board, The Nipissing District Roman Catholic Separate School Board, The Simcoe County Roman Catholic Separate School Board, The Sudbury District Roman Catholic Separate School Board, The Waterloo County Roman Catholic Separate School Board or to a separate school board having jurisdiction wholly or partly in a county where an assessment update has been carried out under subsection 368b (2) of the *Municipal Act*. Non-application  
R.S.O. 1980,  
c. 302

(2) Subsection 214 (7) of the said Act, as enacted by the Statutes of Ontario, 1988, chapter 46, section 2, is repealed.

(3) Subsection 214 (17) of the said Act, as enacted by the Statutes of Ontario, 1988, chapter 46, section 2, is repealed and the following substituted therefor:

(17) Subsections (2) to (16) do not apply to an area municipality in The District Municipality of Muskoka, The Regional Municipality of Haldimand-Norfolk, The Regional Municipality of Sudbury, The Regional Municipality of Waterloo or to a local municipality in a county where an assessment update has been carried out under subsection 368b (2) of the *Municipal Act*. Non-application

(4) Clause 214b (2) (b) of the said Act, as re-enacted by the Statutes of Ontario, 1988, chapter 23, section 8, is repealed and the following substituted therefor:

- (b) The District Municipality of Muskoka, The Regional Municipality of Haldimand-Norfolk or The Regional Municipality of Waterloo.

(5) Subsection 214b (4) of the said Act, as enacted by the Statutes of Ontario, 1987, chapter 17, section 3, is amended by striking out “The Regional Municipality of Haldimand-Norfolk” in the ninth and tenth lines and inserting in lieu thereof “The District Municipality of Muskoka, The Regional Municipality of Haldimand-Norfolk or The Regional Municipality of Waterloo”.

(6) Subsection 222 (4) of the said Act, as re-enacted by the Statutes of Ontario, 1988, chapter 23, section 8, is repealed and the following substituted therefor:

Non-application

(4) Subsection (2) does not apply to an area municipality in The District Municipality of Muskoka, The Regional Municipality of Haldimand-Norfolk, The Regional Municipality of Sudbury, The Regional Municipality of Waterloo or a local municipality in a county where an assessment update has been carried out under subsection 368b (2) of the *Municipal Act*.

(7) Section 225 of the said Act, as re-enacted by the Statutes of Ontario, 1988, chapter 23, section 8, is repealed and the following substituted therefor:

Conflict

R.S.O. 1980,  
cc. 121, 435,  
441, 442,  
302

**225.** In the event of a conflict between any provision in sections 220 to 224 and any provision in any other Act, other than the *District Municipality of Muskoka Act*, the *Regional Municipality of Haldimand-Norfolk Act*, the *Regional Municipality of Sudbury Act*, the *Regional Municipality of Waterloo Act* and section 368d of the *Municipal Act*, the provisions in sections 220 to 224 prevail.

Commence-  
ment

**7.** This Act shall be deemed to have come into force on the 1st day of January, 1989.

Short title

**8.** The short title of this Act is the *District Municipality of Muskoka Statute Law Amendment Act, 1989*.





# Bill 34

## An Act to amend the District Municipality of Muskoka Act and the Education Act

The Hon. J. Sweeney  
*Minister of Municipal Affairs*



*1st Reading*      June 19th, 1989  
*2nd Reading*     December 14th, 1989  
*3rd Reading*  
*Royal Assent*

*(Reprinted as amended by the Committee of the Whole House)*



## EXPLANATORY NOTES

The purpose of the Bill is to provide for the establishment of uniform upper tier and school mill rates throughout the District Area.

The District Municipality of Muskoka will be required to establish each year one uniform residential and farm mill rate and one uniform commercial mill rate to apply throughout the District Area. Each of the school boards operating within the District will also establish uniform residential and farm and uniform commercial mill rates to apply within their particular area of jurisdiction. In order to accomplish this purpose, it is necessary to introduce complementary amendments to the *Education Act*.

The Bill will also require that the portion of payment in lieu of taxes and telephone and telegraph payments received by each area municipality that relate to the requirements of the District Municipality and the school boards shall be paid directly to those bodies.

The Bill will also require that the Ministry of Revenue conduct an update of the assessment base in 1992 and at least every four years thereafter to reflect the subsequent changes in market value.

Subsections 214 (17) and 214b (4) of the *Education Act*, concerning the apportionment of sums required by public school and separate school boards, are also amended in connection with school boards with jurisdiction within The Regional Municipality of Waterloo.

**Bill 34**

**1989**

**An Act to amend the District Municipality  
of Muskoka Act and the Education Act**

HER MAJESTY, by and with the advice and consent of the Legislative Assembly of the Province of Ontario, enacts as follows:

**1. Section 71 of the *District Municipality of Muskoka Act*, being chapter 121 of the Revised Statutes of Ontario, 1980, is repealed and the following substituted therefor:**

**71.** In this Part,

Definitions

“commercial assessment” means the total, according to the last returned assessment roll, of,

- (a) the assessment of real property that is used as the basis for computing business assessment including the assessment for real property that is rented and occupied or used by the Crown in right of Canada or any province or any board, commission, corporation or other agency thereof, or by any municipal corporation or the District Corporation or local board thereof,
- (b) business assessment, and
- (c) the assessment for mineral lands, pipe lines and railway lands, other than railway lands actually in use for residential and farming purposes;

“district rating by-law” means a by-law passed under subsection 74 (2);

“public school board” means a divisional board, as defined in paragraph 19 of subsection 1 (1) of the *Education Act*, that has jurisdiction in the District Area;

R.S.O. 1980,  
c. 129

“rateable property” includes business and other assessment made under the *Assessment Act*;

R.S.O. 1980,  
c. 31

“residential and farm assessment” means the total assessment for real property according to the last returned assessment roll except the assessments for real property mentioned in clauses (a) and (c) of the definition of “commercial assessment”;

R.S.O. 1980,  
c. 129

“separate school board” means a separate school board, as defined in paragraph 59a of subsection 1 (1) of the *Education Act*, that has jurisdiction in the District Area;

“weighted assessment” means, for the relevant area, the total of,

(a) the product obtained by multiplying the residential and farm assessment by 85 per cent, and

(b) the commercial assessment.

**2. Section 74 of the said Act, as amended by the Statutes of Ontario, 1984, chapter 45, section 14, and sections 75, 76, 77 and 78 are repealed and the following substituted therefor:**

Definition

**74.—(1)** In this section, “general district levy” means a sum sufficient,

(a) for payment of the estimated current annual expenditures as adopted under section 73; and

(b) for payment of all debts of the District Corporation falling due within the year as well as amounts required to be raised for sinking funds and principal and interest payments or sinking fund requirements in respect of debenture debt of area municipalities for the payment of which the District Corporation is liable under this Act,

but excludes those amounts for water and sewage purposes that are to be raised by a special rate or rates in accordance with sections 24 and 25.

District  
rating by-law

(2) For purposes of raising the general district levy, the District Council, on or before the 30th day of June in 1989 and on or before the 31st day of March in each subsequent year, shall pass a by-law directing the council of each area municipality to levy a separate rate, as specified in the by-law, on the residential and farm assessment in the area municipality rateable for district purposes and on the commercial assessment in the area municipality rateable for district purposes.

(3) The rate that the District Council shall direct to be levied in each year on commercial assessment under subsection (2) shall be determined by multiplying the general district levy by 1,000 and dividing the product by the weighted assessments for all the area municipalities.

Determina-  
tion of  
commercial  
rate

(4) The rate that the District Council shall direct to be levied on the residential and farm assessment under subsection (2) shall be 85 per cent of the rate that it directs to be levied on commercial assessment.

Determina-  
tion of  
residential  
rate

(5) In each year, the council of each area municipality shall levy, in accordance with the district rating by-law passed for that year, the rates specified in the by-law.

Area munici-  
pality to  
adopt rates

(6) The assessment for real property that is exempt from taxation for district purposes by virtue of any Act or by virtue of a by-law passed by the council of an area municipality under any Act shall not be included when determining the total of the weighted assessment for the purposes of subsection (3).

Tax-exempt  
real property

(7) The full value of all rateable property shall be used in determining,

Full value to  
be used

- (a) the rates to be levied under subsections (3) and (4); and
- (b) the assessment on which the levy shall be made under subsection (5),

and, notwithstanding any other Act, but subject to section 22 of the *Assessment Act*, no fixed assessment applies thereto.

R.S.O. 1980,  
c. 31

(8) A district rating by-law shall specify the amount to be raised in an area municipality as a result of a levy being made in that area municipality in accordance with the by-law and the by-law,

Instalment  
and advance  
payments

- (a) may require specified portions of that amount to be paid to the treasurer of the District Corporation on or before specified dates; and
- (b) may provide that the District Corporation shall pay interest at a rate to be determined by the District Council on any payment required, or portion thereof, made in advance by any area municipality.

(9) The amount specified to be raised in an area municipality pursuant to a district rating by-law shall be deemed to be

Payment

taxes and is a debt of the area municipality to the District Corporation and the treasurer of the area municipality shall pay the amount owing by the area municipality to the treasurer of the District Corporation on or before the dates and in the portions specified in the district rating by-law.

Default

(10) If an area municipality fails to make any payment, or portion thereof, as provided in the district rating by-law, the area municipality shall pay to the District Corporation interest on the amount in default at the rate of 15 per cent per annum from the due date of the payment, or such lower rate as the District Council may by by-law determine, from the date payment is due until it is made.

Extension of  
time

(11) The Minister by order may extend the time for passing a district rating by-law in any year and such an order may be made notwithstanding that the time limit set out in subsection (2) has expired.

Determina-  
tion of  
school rates

**74a.**—(1) In each year, The Muskoka Board of Education, The Nipissing District Roman Catholic Separate School Board, The Simcoe County Roman Catholic Separate School Board and The West Parry Sound Board of Education shall determine for the part of an area municipality which is within the area of jurisdiction of the board the rates to be levied by the applicable area municipality to provide the sums required for elementary and secondary school purposes, as the case may be, in that year and shall specify the amount that is to be provided in that year by the application of those rates.

Idem

R.S.O. 1980,  
c. 129

(2) The determinations required by subsection (1) shall be made in accordance with subsection 222 (1) of the *Education Act*.

Direction to  
area municipi-  
palities

(3) On or before the 1st day of March in each year, The Muskoka Board of Education, The Nipissing District Roman Catholic Separate School Board, The Simcoe County Roman Catholic Separate School Board and The West Parry Sound Board of Education shall direct the council of each applicable area municipality to levy the rates determined by the particular board under subsection (1) in respect of the area municipality or the part thereof which is within the area of jurisdiction of the board and shall advise the area municipality of the amount of money to be raised by levying those rates.

Area municipi-  
pality to levy  
and collect

(4) In each year, the council of an area municipality shall levy rates in accordance with the directions under subsection (3) upon all property in the area municipality rateable for public school board or separate school board purposes, as may be appropriate.



(5) The full value of all applicable rateable property shall be used in determining, Full value to be used

(a) the weighted assessment for each area municipality for purposes of apportioning among the applicable area municipalities the sums required for school purposes by the school boards mentioned in subsection (3);

(b) the rates mentioned in subsection (1); and

(c) the assessment upon which the rates are to be levied under sections 128, 133 and 215 of the *Education Act*, R.S.O. 1980, cc. 129, 31

and notwithstanding any other Act, but subject to section 22 of the *Assessment Act*, no fixed assessment applies thereto.

(6) For the purposes of determining and levying rates under this section, a reference in the *Education Act* to “commercial assessment” or “residential and farm assessment” shall be deemed to be a reference to such assessments as defined in this Part and not as defined in section 220 of that Act. Definitions in R.S.O. 1980, c. 129, s. 220

(7) Subsection 219 (2) of the *Education Act* does not apply to the determination of rates under subsection (1). Non-application of R.S.O. 1980, c. 129, s. 219 (2)

(8) Except as provided in this section, the *Education Act* continues to apply to the levying of rates and collecting of taxes for each public school board and separate school board having jurisdiction in part of the District Area. Application of R.S.O. 1980, c. 129

**74b.—**(1) In this section,

Definitions

“area municipality levy” means the amount required for area municipality purposes under section 164 of the *Municipal Act*, including the sums required for any board, commission or other body, but excluding those amounts required to be raised for district and school purposes; R.S.O. 1980, c. 302

“special area municipality levy” means an amount to be raised by an area municipality that is not included in the area municipality levy, but excluding those amounts required to be raised for district and school purposes.

(2) The council of each area municipality, in each year in accordance with subsections (3) and (4), shall levy separate rates on the whole of the rateable commercial assessment and on the whole of the rateable residential and farm assessment Area municipality levies

in respect of the area municipality levy and the special area municipality levy.

Determi-  
nation of  
commercial  
rates

(3) The rates to be levied in each year on commercial assessment for each separate levy specified in subsection (2) shall be determined by multiplying the sum required for each such levy by 1,000 and dividing the product,

- (a) by the weighted assessment for the area municipality, in the case of an area municipality levy; and
- (b) by the weighted assessment determined on the basis of the assessment that is rateable for the purpose of raising the special area municipality levy, in the case of a special area municipality levy.

Determi-  
nation of  
residential  
rates

(4) The rates to be levied in each year on residential and farm assessment for each separate levy specified in subsection (2) shall be 85 per cent of the rate to be levied on commercial assessment in accordance with subsection (3).

Non-  
application of  
R.S.O. 1980,  
c. 302, s. 158  
and c. 359,  
s. 7

(5) Section 158 of the *Municipal Act* and section 7 of the *Ontario Unconditional Grants Act* do not apply to an area municipality.

Area muni-  
cipality levy

(6) A reference in any other Act to a levy by a local municipality under section 158 of the *Municipal Act* shall, with respect to an area municipality, be deemed to be a reference to a levy under this section.

Tax-exempt  
real property

(7) The assessment for real property that is exempt from taxation for area municipality purposes by virtue of any Act or by virtue of a by-law passed by the council of an area municipality under any Act shall not be included when determining the weighted assessment for purposes of clause (3) (a) or (b).

Interim  
financing,  
District  
Council

**74c.**—(1) The District Council, before the adoption of the estimates for the year, may by by-law requisition from each area municipality a sum not exceeding 50 per cent of the amount that under subsection 74 (8) was, in the district rating by-law for the preceding year, specified to be raised in the particular area municipality and subsections 74 (8), (9) and (10) apply with necessary modifications to the amount requisitioned.

Final  
instalment  
reduced

(2) The amount of any requisition made under subsection (1) in any year upon an area municipality shall be deducted when determining the amount of the portions to be paid in

that year by the area municipality to the treasurer of the District Corporation under the district rating by-law authorized by clause 74 (8) (a).

**74d.**—(1) The council of an area municipality may for any year, before the adoption of the estimates for the year, levy such rates as it may determine on the rateable commercial assessment and on the rateable residential and farm assessment in the area municipality. Interim financing, area municipalities

(2) A by-law for levying rates under subsection (1) shall be passed in the year that the rates are to be levied or may be passed in December of the preceding year if it provides that it does not come into force until a specified day in the following year. By-law in December of preceding year

(3) The rate that may be levied on any assessment under subsection (1) shall not exceed 50 per cent of the total of the rates that were levied or would have been levied on that assessment for all purposes in the preceding year. Determination of rate

(4) If the assessment roll for taxation in the current year has not been returned, the rate levied under subsection (1) may be levied on the assessment according to the assessment roll used for taxation purposes in the preceding year. Assessment roll

(5) The amount of any levy made on an assessment under subsection (1) shall be deducted from the total amount levied on that assessment for that year under sections 74, 74a and 74b. Interim levy deducted from final levy

(6) If the taxes levied on an assessment for real property or on a business assessment under this section exceed the taxes to be levied on that assessment for the year under sections 74, 74a and 74b, the treasurer of the area municipality shall, not later than twenty-one days following the giving of a notice of demand of taxes payable, refund to the person assessed that portion of the taxes paid in excess of the amount payable for the year pursuant to a levy made under sections 74, 74a and 74b. Interim levy in excess of final levy

(7) The provisions of the *Municipal Act* with respect to the levy of rates and the collection of taxes apply with necessary modifications to the levy of rates and collection of taxes under this section. Application of R.S.O. 1980, c. 302

**74e.** If a direction has been made under subsection 78 (1) that a new assessment roll be returned for taxation in the current year, the Minister by order, Power of Minister

- (a) may prescribe the maximum sum that may be requisitioned from each area municipality under subsection 74c (1); and
- (b) may prescribe the maximum rates that may be levied by the council of each area municipality under subsection 74d (1).

## Definitions

**75.—(1)** In this section,

“payment in lieu of taxes” means an amount that an area municipality is eligible to receive under,

- R.S.O. 1980,  
c. 31 (a) subsection 26 (3), (4) or (5) of the *Assessment Act*,
- R.S.O. 1980,  
c. 209 (b) subsection 7 (6) of the *Housing Development Act*, but not including that portion payable to a school board in accordance with subsection 7 (10) of that Act,
- R.S.O. 1980,  
c. 302 (c) section 160 and subsection 160a (3) of the *Municipal Act*,
- R.S.O. 1980,  
c. 311 (d) subsection 4 (1), (2) or (3) of the *Municipal Tax Assistance Act*,
- R.S.O. 1980,  
c. 361 (e) section 42 of the *Ontario Water Resources Act*,
- R.S.O. 1980,  
c. 384 (f) subsection 46 (2), (3), (4) or (5) of the *Power Corporation Act*, but not including that portion payable to a school board in accordance with subsection 46 (9) of that Act,
- R.S.O. 1980,  
c. 510 (g) section 10 or 11 of the *Trees Act*,
- R.S.C. 1985,  
c. M-13 (h) the *Municipal Grants Act* (Canada), or
- (i) any Act of Ontario or of Canada or any agreement where the payment is from any government or government agency and is in lieu of taxes on real property or business assessment, but not including a payment referred to in sections 498 and 498a of the *Municipal Act*;

“taxes for district purposes” means the sum of the taxes levied by an area municipality for district purposes as specified in the district rating by-law under subsection 74 (2) and in respect of water and sewer purposes under sections 24 and 25, excluding any adjustments under section 32 or 33 of the *Assessment Act*;

“taxes for local purposes” means the taxes levied by an area municipality for local purposes under subsection 74b (2), excluding any adjustments under section 32 or 33 of the *Assessment Act*;

R.S.O. 1980,  
c. 31

“total taxes for all purposes” means the sum of the taxes for local purposes, the taxes for district purposes and the taxes levied by the area municipality for school purposes under subsection 74a (1), excluding any adjustments under section 32 or 33 of the *Assessment Act*.

(2) If an area municipality is eligible to receive a payment in lieu of taxes for any year, it shall pay to the treasurer of the District Corporation a portion equal to the amount obtained by multiplying the amount that the area municipality is eligible to receive by the quotient, correct to five decimal places, obtained by dividing the taxes for district purposes for the year by the total of,

Area municipalities to share payments in lieu of taxes

(a) the taxes for local purposes for the year; and

(b) the taxes for district purposes for the year.

(3) Notwithstanding subsection (2), if an area municipality is eligible to receive a payment in lieu of taxes for any year under,

Sharing of certain payments

(a) subsection 26 (3), (4) or (5) of the *Assessment Act*;

(b) section 42 of the *Ontario Water Resources Act*;

R.S.O. 1980,  
c. 361

(c) subsection 46 (2), (3), (4) or (5) of the *Power Corporation Act*, but not including that portion payable to a school board in accordance with subsection 46 (9) of that Act;

R.S.O. 1980,  
c. 384

(d) section 10 or 11 of the *Trees Act*; or

R.S.O. 1980,  
c. 510

(e) the *Municipal Grants Act* (Canada),

R.S.C. 1985,  
c. M-13

and the calculation of the payment is based in part on the rates that were levied for school purposes, then the portion to be paid under subsection (2) shall be calculated by multiplying the amount that the area municipality is eligible to receive by the quotient, correct to five decimal places, obtained by dividing the taxes for district purposes for the year by the total taxes for all purposes for the year.

(4) The treasurer of each area municipality shall, on or before the 1st day of March in each year, send a statement to

Treasurer to provide estimate of share



the treasurer of the District Corporation and each school board showing an estimate of the amount that the area municipality will be required to pay to the District Corporation for the year under subsection (2) and to each school board under subsection 7 (10) of the *Housing Development Act* and under subsection 46 (9) of the *Power Corporation Act*.

R.S.O. 1980.  
cc. 209, 384

Allocation of  
payments in  
lieu of taxes

(5) If an area municipality is required to pay a portion of a payment in lieu of taxes to the District Corporation under subsection (2), or to a school board, the provisions of,

R.S.O. 1980.  
c. 31

(a) subsections 26 (7) and (9) of the *Assessment Act*;

(b) subsection 7 (10) of the *Housing Development Act*;

R.S.O. 1980.  
c. 302

(c) subsections 160 (12) and (16) and subsection 160a (4) of the *Municipal Act*; and

(d) subsection 46 (7) of the *Power Corporation Act*,

with respect to the equalization of assessment or allocation and deposit of payments shall not apply to that entitlement.

Payment of  
portion of  
telephone  
and telegraph  
tax

**76.—**(1) Each area municipality shall pay a portion of the tax levied by it under subsections 161 (12) and (13) of the *Municipal Act* to the District Corporation and the appropriate public school boards in the proportion that the taxes levied by it on commercial assessment in the year for each such body bears to the total taxes levied by it in the year on commercial assessment for all purposes, other than separate school board purposes.

Exclusion of  
taxes added  
to collector's  
roll

(2) In determining the taxes levied on commercial assessment under subsection (1), there shall be excluded any adjustments under section 32 or 33 of the *Assessment Act*.

Statement by  
treasurer

(3) The treasurer of each area municipality shall, on or before the 1st day of March in each year, send a statement to the treasurer of the District Corporation and the appropriate public school boards showing an estimate of the amount which the area municipality will be required to pay to that body for the year under subsection (1).

Exclusion of  
R.S.O. 1980.  
c. 302,  
s. 161 (18-24)

(4) Subsections 161 (18) to (24) of the *Municipal Act* do not apply if payments are made by an area municipality under subsection (1).

Payment in  
lieu and  
telephone  
and telegraph  
levies

**77.—**(1) An amount payable by an area municipality to,

- (a) the District Corporation under subsection 75 (2) or 76 (1);
- (b) a public school board under subsection 76 (1); or
- (c) a school board under subsection 7 (10) of the *Housing Development Act* or under subsection 46 (9) of the *Power Corporation Act*,

R.S.O. 1980,  
cc. 209, 384

is a debt of the area municipality to the District Corporation or school board, as the case may be, and, subject to subsections (2) and (3), instalments are payable on account thereof as follows:

1. A first instalment of 25 per cent of the amount payable for the same purposes in the preceding year, on or before the 31st day of March.
2. A second instalment of 25 per cent of the amount payable for the same purposes in the preceding year, on or before the 30th day of June.
3. A third instalment of 25 per cent of the amount payable for the same purposes in the preceding year, on or before the 30th day of September.
4. A fourth instalment of the balance of the entitlement for the year, on or before the 15th day of December.

(2) The District Council may by by-law provide for an alternative number of instalments and due dates for amounts payable by area municipalities to the District Corporation under subsection (1).

Alternative  
payment  
schedule

(3) If a school board having jurisdiction within the District Area has established an agreement which applies to one or more area municipalities in accordance with subsection 215 (3) of the *Education Act*, the number of instalments and due dates specified in that agreement shall apply with necessary modifications to those amounts otherwise payable to the school board under subsection (1).

Idem

R.S.O. 1980,  
c. 129

(4) An amount payable by an area municipality under subsection 75 (2) or 76 (1) or under subsection 7 (10) of the *Housing Development Act* or under subsection 46 (9) of the *Power Corporation Act* shall be credited by the District Corporation or school board to its general revenues.

General  
revenues

R.S.O. 1980,  
cc. 209, 384

## Default

(5) If an area municipality fails to make any payment as provided under subsection (1) or as altered under subsection (2) or (3), the area municipality shall pay to the District Corporation or school board, as applicable, interest on the amount past due at the rate of 15 per cent per annum, or at such lower rate as the school board or District Corporation may by by-law determine from time to time.

## Overpayment

(6) If the total amount paid for the year under subsection (1), (2) or (3) exceeds the total amount payable for that purpose in the year, the area municipality shall notify the District Corporation or the school board, as the case may be, of the amount of the overpayment and the District Corporation or school board shall forthwith pay that amount to the area municipality.

District-wide  
assessment  
update

**78.—**(1) If the Minister of Revenue considers that any parcel or parcels of real property within the District Area are assessed inequitably with respect to the assessment of any other parcel or parcels of real property in the District Area, the Minister of Revenue may direct that such changes be made in the assessment to be contained in the assessment roll next to be returned for each area municipality as will, in the opinion of the Minister of Revenue, eliminate or reduce inequalities in the assessment of real property in the District Area.

Date for new  
assessment  
roll

(2) If a direction is made under subsection (1), the Minister of Revenue may, for that purpose, name a day upon which the assessment commissioner for the District Area shall return a new assessment roll for the assessment at market value of real property in all area municipalities in the District Area.

When  
direction  
effective

(3) A direction under subsection (1) is effective upon publication of a notice of the direction in *The Ontario Gazette*.

Application  
of new  
assessment  
roll

(4) If the assessment roll of an area municipality for taxation in any year is changed pursuant to a direction of the Minister of Revenue under subsection (1),

- (a) the assessment roll to be returned for that area municipality for taxation in that year shall be the assessment roll as so changed and not the assessment roll that would otherwise have been returned; and
- (b) the assessment roll to be returned in each year following that year shall be the assessment roll returned under clause (a) as amended, added to, or otherwise altered under the *Assessment Act* up to

the date when the assessment roll is returned in each such following year.

(5) Notwithstanding subsection (4), if the assessor is of the opinion that an assessment to be shown on the assessment roll to be returned is inequitable with respect to the assessment of similar real property in the vicinity, the assessor may alter the value of the assessment to the extent necessary to make the assessment equitable with the assessment of such similar real property.

Exception

(6) For the purpose of every Act, the assessment roll of an area municipality returned under subsection (4) shall be deemed to be the assessment roll of the area municipality returned under the *Assessment Act*.

Status of  
assessment  
roll

R.S.O. 1980,  
c. 31

(7) In 1993 for purposes of taxation in 1994, the Minister of Revenue shall make a direction under subsection (1) for changes to be made to the assessment rolls of the area municipalities.

Mandatory  
return of  
updated roll  
in 1993

(8) In every fourth year following the most recent direction under subsection (1), the Minister of Revenue shall make a direction under subsection (1) for changes to be made to the assessment rolls of the area municipalities.

Mandatory  
return of  
updated roll  
every fourth  
year

(9) The Minister of Revenue shall not make a direction under subsection (1) unless the District Council by resolution has requested that a direction be made, but a resolution is not required for a direction of the Minister of Revenue required under subsection (7) or (8).

Resolution  
required

(10) Except as provided in subsections (1) and (11), the *Assessment Act* and the alterations, corrections, additions and amendments authorized by that Act apply to an assessment roll returned under subsection (4).

Provisions of  
R.S.O. 1980,  
c. 31

(11) Subsections 63 (1) and (3) and sections 64 and 65 of the *Assessment Act* do not apply to an area municipality or to the assessment roll of any area municipality in respect of 1989 and subsequent years.

Idem

(12) The Assessment Review Board, the Municipal Board or any court, in determining the value at which any real property shall be assessed in any complaint, appeal, proceeding or action, shall have reference to the value at which similar real property in the vicinity is assessed, and the amount of any assessment of real property shall not be altered unless the Assessment Review Board, Municipal Board or court is satisfied that the assessment is inequitable with respect to the

Powers on  
appeal



assessment of similar real property in the vicinity, and in that event the assessment of the real property shall not be altered to any greater extent than is necessary to make the assessment equitable with the assessment of such similar real property.

No amendment  
to collector's  
roll  
R.S.O. 1980,  
c. 31

(13) No amendment shall be made to the assessment or a collector's roll under clause 33 (a) of the *Assessment Act* until the cumulative value of the increase since the date of the most recent change to the assessment roll under a direction of the Minister of Revenue under subsection (1) is at least in the sum of \$5,000 at market value.

Table of  
rates for pipe  
lines

(14) For purposes of subsection 24 (16) of the *Assessment Act*, changes made in the assessment roll of an area municipality under a direction of the Minister of Revenue under subsection (1) shall be deemed to be an assessment update of all property within the area municipality under section 70 of the *Assessment Act*.


Rights of  
appeal  
preserved

(15) Nothing in section 74, 74a or 74b in any way deprives any person of any right of appeal provided for in the *Assessment Act* or affects the operation of subsection 36 (6) of that Act.

Direction  
may be  
retroactive

(16) A direction made under subsection (1) may be made retroactive to the 1st day of December of the year preceding the year in which it was made.

Deeming  
R.S.O. 1980,  
c. 302

(17) For the purposes of sections 362 and 363 of the *Municipal Act*, the District Corporation shall be deemed to be a municipality. 

**3. Subsection 82 (3) of the said Act is repealed and the following substituted therefor:**

Pollution  
control fund

(3) The District Council shall establish and maintain a pollution control fund and shall contribute to such fund, in each year, the sum equivalent to a sum calculated at one-quarter of one mill in the dollar upon the total residential and farm assessment and commercial assessment for all area municipalities in that year.

Transition  
R.S.O. 1980,  
cc. 302, 129

**4. Notwithstanding subsection 164 (2) of the *Municipal Act* or subsection 216 (2) of the *Education Act*, if the amount levied by an area municipality for district purposes or school purposes in 1988 differs from the sum the area municipality ought to have levied for district purposes or school purposes, the area municipality shall debit or credit such deficit or surplus, as applicable, to the general funds of the municipality and not revise the rates to be levied for such body in 1989.**



**5.—(1)** Nothing in this Act affects the validity of an interim levy made by the District Council or by the council of an area municipality under section 76 of the *District Municipality of Muskoka Act* as it existed before the coming into force of this Act. Transition  
R.S.O. 1980,  
c. 121

(2) Subsections 74 (8), (9) and (10), as re-enacted by section 2 of this Act, and subsection 74c (2), as enacted by section 2 of this Act, of the *District Municipality of Muskoka Act* apply with necessary modifications to an interim levy made by the District Council in 1989. Idem  
R.S.O. 1980,  
c. 121

(3) Subsections 74d (4), (5) and (6), as enacted by section 2 of this Act, of the *District Municipality of Muskoka Act* apply with necessary modifications to an interim levy made by an area municipality in 1989. Idem

**6.—(1)** Subsection 130 (10) of the *Education Act*, being chapter 129 of the Revised Statutes of Ontario, 1980, as re-enacted by the Statutes of Ontario, 1988, chapter 23, section 8, is repealed and the following substituted therefor:

(10) This section does not apply to The Haldimand-Norfolk Roman Catholic Separate School Board, The Nipissing District Roman Catholic Separate School Board, The Simcoe County Roman Catholic Separate School Board, The Sudbury District Roman Catholic Separate School Board, The Waterloo County Roman Catholic Separate School Board or to a separate school board having jurisdiction wholly or partly in a county where an assessment update has been carried out under subsection 368b (2) of the *Municipal Act*. Non-application  
R.S.O. 1980,  
c. 302

(2) Subsection 214 (7) of the said Act, as enacted by the Statutes of Ontario, 1988, chapter 46, section 2, is repealed.

(3) Subsection 214 (17) of the said Act, as enacted by the Statutes of Ontario, 1988, chapter 46, section 2, is repealed and the following substituted therefor:

(17) Subsections (2) to (16) do not apply to an area municipality in The District Municipality of Muskoka, The Regional Municipality of Haldimand-Norfolk, The Regional Municipality of Sudbury, The Regional Municipality of Waterloo or to a local municipality in a county where an assessment update has been carried out under subsection 368b (2) of the *Municipal Act*. Non-application

(4) Clause 214b (2) (b) of the said Act, as re-enacted by the Statutes of Ontario, 1988, chapter 23, section 8, is repealed and the following substituted therefor:

- (b) The District Municipality of Muskoka, The Regional Municipality of Haldimand-Norfolk or The Regional Municipality of Waterloo.

(5) Subsection 214b (4) of the said Act, as enacted by the Statutes of Ontario, 1987, chapter 17, section 3, is amended by striking out “The Regional Municipality of Haldimand-Norfolk” in the ninth and tenth lines and inserting in lieu thereof “The District Municipality of Muskoka, The Regional Municipality of Haldimand-Norfolk or The Regional Municipality of Waterloo”.

(6) Subsection 222 (4) of the said Act, as re-enacted by the Statutes of Ontario, 1988, chapter 23, section 8, is repealed and the following substituted therefor:

Non-application

(4) Subsection (2) does not apply to an area municipality in The District Municipality of Muskoka, The Regional Municipality of Haldimand-Norfolk, The Regional Municipality of Sudbury, The Regional Municipality of Waterloo or a local municipality in a county where an assessment update has been carried out under subsection 368b (2) of the *Municipal Act*.

(7) Section 225 of the said Act, as re-enacted by the Statutes of Ontario, 1988, chapter 23, section 8, is repealed and the following substituted therefor:

Conflict

R.S.O. 1980,  
cc. 121, 435,  
441, 442,  
302

**225.** In the event of a conflict between any provision in sections 220 to 224 and any provision in any other Act, other than the *District Municipality of Muskoka Act*, the *Regional Municipality of Haldimand-Norfolk Act*, the *Regional Municipality of Sudbury Act*, the *Regional Municipality of Waterloo Act* and section 368d of the *Municipal Act*, the provisions in sections 220 to 224 prevail.

Commencement

**7.** This Act shall be deemed to have come into force on the 1st day of January, 1989.

Short title

**8.** The short title of this Act is the *District Municipality of Muskoka Statute Law Amendment Act, 1989*.





# Bill 34

(Chapter 74  
*Statutes of Ontario, 1989*)

## **An Act to amend the District Municipality of Muskoka Act and the Education Act**

The Hon. J. Sweeney  
*Minister of Municipal Affairs*



<i>1st Reading</i>	June 19th, 1989
<i>2nd Reading</i>	December 14th, 1989
<i>3rd Reading</i>	December 19th, 1989
<i>Royal Assent</i>	December 19th, 1989





**Bill 34**

**1989**

**An Act to amend the District Municipality  
of Muskoka Act and the Education Act**

HER MAJESTY, by and with the advice and consent of the Legislative Assembly of the Province of Ontario, enacts as follows:

**1.** Section 71 of the *District Municipality of Muskoka Act*, being chapter 121 of the Revised Statutes of Ontario, 1980, is repealed and the following substituted therefor:

**71.** In this Part,

Definitions

“commercial assessment” means the total, according to the last returned assessment roll, of,

- (a) the assessment of real property that is used as the basis for computing business assessment including the assessment for real property that is rented and occupied or used by the Crown in right of Canada or any province or any board, commission, corporation or other agency thereof, or by any municipal corporation or the District Corporation or local board thereof,
- (b) business assessment, and
- (c) the assessment for mineral lands, pipe lines and railway lands, other than railway lands actually in use for residential and farming purposes;

“district rating by-law” means a by-law passed under subsection 74 (2);

“public school board” means a divisional board, as defined in paragraph 19 of subsection 1 (1) of the *Education Act*, that has jurisdiction in the District Area;

R.S.O. 1980,  
c. 129

“rateable property” includes business and other assessment made under the *Assessment Act*;

R.S.O. 1980,  
c. 31

“residential and farm assessment” means the total assessment for real property according to the last returned assessment roll except the assessments for real property mentioned in clauses (a) and (c) of the definition of “commercial assessment”;

R.S.O. 1980,  
c. 129 “separate school board” means a separate school board, as defined in paragraph 59a of subsection 1 (1) of the *Education Act*, that has jurisdiction in the District Area;

“weighted assessment” means, for the relevant area, the total of,

- (a) the product obtained by multiplying the residential and farm assessment by 85 per cent, and
- (b) the commercial assessment.

**2. Section 74 of the said Act, as amended by the Statutes of Ontario, 1984, chapter 45, section 14, and sections 75, 76, 77 and 78 are repealed and the following substituted therefor:**

Definition **74.—**(1) In this section, “general district levy” means a sum sufficient,

- (a) for payment of the estimated current annual expenditures as adopted under section 73; and
- (b) for payment of all debts of the District Corporation falling due within the year as well as amounts required to be raised for sinking funds and principal and interest payments or sinking fund requirements in respect of debenture debt of area municipalities for the payment of which the District Corporation is liable under this Act,

but excludes those amounts for water and sewage purposes that are to be raised by a special rate or rates in accordance with sections 24 and 25.

District  
rating by-law

(2) For purposes of raising the general district levy, the District Council, on or before the 30th day of June in 1989 and on or before the 31st day of March in each subsequent year, shall pass a by-law directing the council of each area municipality to levy a separate rate, as specified in the by-law, on the residential and farm assessment in the area municipality rateable for district purposes and on the commercial assessment in the area municipality rateable for district purposes.

(3) The rate that the District Council shall direct to be levied in each year on commercial assessment under subsection (2) shall be determined by multiplying the general district levy by 1,000 and dividing the product by the weighted assessments for all the area municipalities.

Determina-  
tion of  
commercial  
rate

(4) The rate that the District Council shall direct to be levied on the residential and farm assessment under subsection (2) shall be 85 per cent of the rate that it directs to be levied on commercial assessment.

Determina-  
tion of  
residential  
rate

(5) In each year, the council of each area municipality shall levy, in accordance with the district rating by-law passed for that year, the rates specified in the by-law.

Area muni-  
cality to  
adopt rates

(6) The assessment for real property that is exempt from taxation for district purposes by virtue of any Act or by virtue of a by-law passed by the council of an area municipality under any Act shall not be included when determining the total of the weighted assessment for the purposes of subsection (3).

Tax-exempt  
real property

(7) The full value of all rateable property shall be used in determining,

Full value to  
be used

(a) the rates to be levied under subsections (3) and (4);  
and

(b) the assessment on which the levy shall be made  
under subsection (5),

and, notwithstanding any other Act, but subject to section 22 of the *Assessment Act*, no fixed assessment applies thereto.

R.S.O. 1980,  
c. 31

(8) A district rating by-law shall specify the amount to be raised in an area municipality as a result of a levy being made in that area municipality in accordance with the by-law and the by-law,

Instalment  
and advance  
payments

(a) may require specified portions of that amount to be paid to the treasurer of the District Corporation on or before specified dates; and

(b) may provide that the District Corporation shall pay interest at a rate to be determined by the District Council on any payment required, or portion thereof, made in advance by any area municipality.

(9) The amount specified to be raised in an area municipality pursuant to a district rating by-law shall be deemed to be

Payment

taxes and is a debt of the area municipality to the District Corporation and the treasurer of the area municipality shall pay the amount owing by the area municipality to the treasurer of the District Corporation on or before the dates and in the portions specified in the district rating by-law.

Default

(10) If an area municipality fails to make any payment, or portion thereof, as provided in the district rating by-law, the area municipality shall pay to the District Corporation interest on the amount in default at the rate of 15 per cent per annum from the due date of the payment, or such lower rate as the District Council may by by-law determine, from the date payment is due until it is made.

Extension of time

(11) The Minister by order may extend the time for passing a district rating by-law in any year and such an order may be made notwithstanding that the time limit set out in subsection (2) has expired.

Determination of school rates

**74a.**—(1) In each year, The Muskoka Board of Education, The Nipissing District Roman Catholic Separate School Board, The Simcoe County Roman Catholic Separate School Board and The West Parry Sound Board of Education shall determine for the part of an area municipality which is within the area of jurisdiction of the board the rates to be levied by the applicable area municipality to provide the sums required for elementary and secondary school purposes, as the case may be, in that year and shall specify the amount that is to be provided in that year by the application of those rates.

Idem

R.S.O. 1980,  
c. 129

(2) The determinations required by subsection (1) shall be made in accordance with subsection 222 (1) of the *Education Act*.

Direction to area municipalities

(3) On or before the 1st day of March in each year, The Muskoka Board of Education, The Nipissing District Roman Catholic Separate School Board, The Simcoe County Roman Catholic Separate School Board and The West Parry Sound Board of Education shall direct the council of each applicable area municipality to levy the rates determined by the particular board under subsection (1) in respect of the area municipality or the part thereof which is within the area of jurisdiction of the board and shall advise the area municipality of the amount of money to be raised by levying those rates.

Area municipality to levy and collect

(4) In each year, the council of an area municipality shall levy rates in accordance with the directions under subsection (3) upon all property in the area municipality rateable for public school board or separate school board purposes, as may be appropriate.



(5) The full value of all applicable rateable property shall be used in determining, Full value to be used

(a) the weighted assessment for each area municipality for purposes of apportioning among the applicable area municipalities the sums required for school purposes by the school boards mentioned in subsection (3);

(b) the rates mentioned in subsection (1); and

(c) the assessment upon which the rates are to be levied under sections 128, 133 and 215 of the *Education Act*, R.S.O. 1980, cc. 129, 31

and notwithstanding any other Act, but subject to section 22 of the *Assessment Act*, no fixed assessment applies thereto.

(6) For the purposes of determining and levying rates under this section, a reference in the *Education Act* to “commercial assessment” or “residential and farm assessment” shall be deemed to be a reference to such assessments as defined in this Part and not as defined in section 220 of that Act. Definitions in R.S.O. 1980, c. 129, s. 220

(7) Subsection 219 (2) of the *Education Act* does not apply to the determination of rates under subsection (1). Non-application of R.S.O. 1980, c. 129, s. 219 (2)

(8) Except as provided in this section, the *Education Act* continues to apply to the levying of rates and collecting of taxes for each public school board and separate school board having jurisdiction in part of the District Area. Application of R.S.O. 1980, c. 129

**74b.**—(1) In this section,

Definitions

“area municipality levy” means the amount required for area municipality purposes under section 164 of the *Municipal Act*, including the sums required for any board, commission or other body, but excluding those amounts required to be raised for district and school purposes; R.S.O. 1980, c. 302

“special area municipality levy” means an amount to be raised by an area municipality that is not included in the area municipality levy, but excluding those amounts required to be raised for district and school purposes.

(2) The council of each area municipality, in each year in accordance with subsections (3) and (4), shall levy separate rates on the whole of the rateable commercial assessment and on the whole of the rateable residential and farm assessment Area municipality levies

in respect of the area municipality levy and the special area municipality levy.

Determi-  
nation of  
commercial  
rates

(3) The rates to be levied in each year on commercial assessment for each separate levy specified in subsection (2) shall be determined by multiplying the sum required for each such levy by 1,000 and dividing the product,

(a) by the weighted assessment for the area municipality, in the case of an area municipality levy; and

(b) by the weighted assessment determined on the basis of the assessment that is rateable for the purpose of raising the special area municipality levy, in the case of a special area municipality levy.

Determi-  
nation of  
residential  
rates

(4) The rates to be levied in each year on residential and farm assessment for each separate levy specified in subsection (2) shall be 85 per cent of the rate to be levied on commercial assessment in accordance with subsection (3).

Non-  
application of  
R.S.O. 1980,  
c. 302, s. 158  
and c. 359,  
s. 7

(5) Section 158 of the *Municipal Act* and section 7 of the *Ontario Unconditional Grants Act* do not apply to an area municipality.

Area muni-  
cipality levy

(6) A reference in any other Act to a levy by a local municipality under section 158 of the *Municipal Act* shall, with respect to an area municipality, be deemed to be a reference to a levy under this section.

Tax-exempt  
real property

(7) The assessment for real property that is exempt from taxation for area municipality purposes by virtue of any Act or by virtue of a by-law passed by the council of an area municipality under any Act shall not be included when determining the weighted assessment for purposes of clause (3) (a) or (b).

Interim  
financing,  
District  
Council

**74c.**—(1) The District Council, before the adoption of the estimates for the year, may by by-law requisition from each area municipality a sum not exceeding 50 per cent of the amount that under subsection 74 (8) was, in the district rating by-law for the preceding year, specified to be raised in the particular area municipality and subsections 74 (8), (9) and (10) apply with necessary modifications to the amount requisitioned.

Final  
instalment  
reduced

(2) The amount of any requisition made under subsection (1) in any year upon an area municipality shall be deducted when determining the amount of the portions to be paid in

that year by the area municipality to the treasurer of the District Corporation under the district rating by-law authorized by clause 74 (8) (a).

**74d.**—(1) The council of an area municipality may for any year, before the adoption of the estimates for the year, levy such rates as it may determine on the rateable commercial assessment and on the rateable residential and farm assessment in the area municipality.

Interim  
financing,  
area municipi-  
palities

(2) A by-law for levying rates under subsection (1) shall be passed in the year that the rates are to be levied or may be passed in December of the preceding year if it provides that it does not come into force until a specified day in the following year.

By-law in  
December of  
preceding  
year

(3) The rate that may be levied on any assessment under subsection (1) shall not exceed 50 per cent of the total of the rates that were levied or would have been levied on that assessment for all purposes in the preceding year.

Determi-  
nation of  
rate

(4) If the assessment roll for taxation in the current year has not been returned, the rate levied under subsection (1) may be levied on the assessment according to the assessment roll used for taxation purposes in the preceding year.

Assessment  
roll

(5) The amount of any levy made on an assessment under subsection (1) shall be deducted from the total amount levied on that assessment for that year under sections 74, 74a and 74b.

Interim levy  
deducted  
from final  
levy

(6) If the taxes levied on an assessment for real property or on a business assessment under this section exceed the taxes to be levied on that assessment for the year under sections 74, 74a and 74b, the treasurer of the area municipality shall, not later than twenty-one days following the giving of a notice of demand of taxes payable, refund to the person assessed that portion of the taxes paid in excess of the amount payable for the year pursuant to a levy made under sections 74, 74a and 74b.

Interim levy  
in excess of  
final levy

(7) The provisions of the *Municipal Act* with respect to the levy of rates and the collection of taxes apply with necessary modifications to the levy of rates and collection of taxes under this section.

Application  
of  
R.S.O. 1980,  
c. 302

**74e.** If a direction has been made under subsection 78 (1) that a new assessment roll be returned for taxation in the current year, the Minister by order,

Power of  
Minister

- (a) may prescribe the maximum sum that may be requisitioned from each area municipality under subsection 74c (1); and
- (b) may prescribe the maximum rates that may be levied by the council of each area municipality under subsection 74d (1).

## Definitions

**75.—**(1) In this section,

“payment in lieu of taxes” means an amount that an area municipality is eligible to receive under,

- R.S.O. 1980,  
c. 31 (a) subsection 26 (3), (4) or (5) of the *Assessment Act*,
- R.S.O. 1980,  
c. 209 (b) subsection 7 (6) of the *Housing Development Act*, but not including that portion payable to a school board in accordance with subsection 7 (10) of that Act,
- R.S.O. 1980,  
c. 302 (c) section 160 and subsection 160a (3) of the *Municipal Act*,
- R.S.O. 1980,  
c. 311 (d) subsection 4 (1), (2) or (3) of the *Municipal Tax Assistance Act*,
- R.S.O. 1980,  
c. 361 (e) section 42 of the *Ontario Water Resources Act*,
- R.S.O. 1980,  
c. 384 (f) subsection 46 (2), (3), (4) or (5) of the *Power Corporation Act*, but not including that portion payable to a school board in accordance with subsection 46 (9) of that Act,
- R.S.O. 1980,  
c. 510 (g) section 10 or 11 of the *Trees Act*,
- R.S.C. 1985,  
c. M-13 (h) the *Municipal Grants Act* (Canada), or
- (i) any Act of Ontario or of Canada or any agreement where the payment is from any government or government agency and is in lieu of taxes on real property or business assessment, but not including a payment referred to in sections 498 and 498a of the *Municipal Act*;

“taxes for district purposes” means the sum of the taxes levied by an area municipality for district purposes as specified in the district rating by-law under subsection 74 (2) and in respect of water and sewer purposes under sections 24 and 25, excluding any adjustments under section 32 or 33 of the *Assessment Act*;



“taxes for local purposes” means the taxes levied by an area municipality for local purposes under subsection 74b (2), excluding any adjustments under section 32 or 33 of the *Assessment Act*;

R.S.O. 1980,  
c. 31

“total taxes for all purposes” means the sum of the taxes for local purposes, the taxes for district purposes and the taxes levied by the area municipality for school purposes under subsection 74a (1), excluding any adjustments under section 32 or 33 of the *Assessment Act*.

(2) If an area municipality is eligible to receive a payment in lieu of taxes for any year, it shall pay to the treasurer of the District Corporation a portion equal to the amount obtained by multiplying the amount that the area municipality is eligible to receive by the quotient, correct to five decimal places, obtained by dividing the taxes for district purposes for the year by the total of,

Area municipalities to share payments in lieu of taxes

- (a) the taxes for local purposes for the year; and
- (b) the taxes for district purposes for the year.

(3) Notwithstanding subsection (2), if an area municipality is eligible to receive a payment in lieu of taxes for any year under,

Sharing of certain payments

- (a) subsection 26 (3), (4) or (5) of the *Assessment Act*;
- (b) section 42 of the *Ontario Water Resources Act*;
- (c) subsection 46 (2), (3), (4) or (5) of the *Power Corporation Act*, but not including that portion payable to a school board in accordance with subsection 46 (9) of that Act;
- (d) section 10 or 11 of the *Trees Act*; or
- (e) the *Municipal Grants Act* (Canada),

R.S.O. 1980,  
c. 361

R.S.O. 1980,  
c. 384

R.S.O. 1980,  
c. 510

R.S.C. 1985,  
c. M-13

and the calculation of the payment is based in part on the rates that were levied for school purposes, then the portion to be paid under subsection (2) shall be calculated by multiplying the amount that the area municipality is eligible to receive by the quotient, correct to five decimal places, obtained by dividing the taxes for district purposes for the year by the total taxes for all purposes for the year.

(4) The treasurer of each area municipality shall, on or before the 1st day of March in each year, send a statement to

Treasurer to provide estimate of share



the treasurer of the District Corporation and each school board showing an estimate of the amount that the area municipality will be required to pay to the District Corporation for the year under subsection (2) and to each school board under subsection 7 (10) of the *Housing Development Act* and under subsection 46 (9) of the *Power Corporation Act*.

R.S.O. 1980,  
cc. 209, 384

Allocation of  
payments in  
lieu of taxes

(5) If an area municipality is required to pay a portion of a payment in lieu of taxes to the District Corporation under subsection (2), or to a school board, the provisions of,

R.S.O. 1980,  
c. 31

(a) subsections 26 (7) and (9) of the *Assessment Act*;

(b) subsection 7 (10) of the *Housing Development Act*;

R.S.O. 1980,  
c. 302

(c) subsections 160 (12) and (16) and subsection 160a (4) of the *Municipal Act*; and

(d) subsection 46 (7) of the *Power Corporation Act*,

with respect to the equalization of assessment or allocation and deposit of payments shall not apply to that entitlement.

Payment of  
portion of  
telephone  
and telegraph  
tax

**76.**—(1) Each area municipality shall pay a portion of the tax levied by it under subsections 161 (12) and (13) of the *Municipal Act* to the District Corporation and the appropriate public school boards in the proportion that the taxes levied by it on commercial assessment in the year for each such body bears to the total taxes levied by it in the year on commercial assessment for all purposes, other than separate school board purposes.

Exclusion of  
taxes added  
to collector's  
roll

(2) In determining the taxes levied on commercial assessment under subsection (1), there shall be excluded any adjustments under section 32 or 33 of the *Assessment Act*.

Statement by  
treasurer

(3) The treasurer of each area municipality shall, on or before the 1st day of March in each year, send a statement to the treasurer of the District Corporation and the appropriate public school boards showing an estimate of the amount which the area municipality will be required to pay to that body for the year under subsection (1).

Exclusion of  
R.S.O. 1980,  
c. 302,  
s. 161 (18-24)

(4) Subsections 161 (18) to (24) of the *Municipal Act* do not apply if payments are made by an area municipality under subsection (1).

Payment in  
lieu and  
telephone  
and telegraph  
levies

**77.**—(1) An amount payable by an area municipality to,

- (a) the District Corporation under subsection 75 (2) or 76 (1);
- (b) a public school board under subsection 76 (1); or
- (c) a school board under subsection 7 (10) of the *Housing Development Act* or under subsection 46 (9) of the *Power Corporation Act*,

R.S.O. 1980,  
cc. 209, 384

is a debt of the area municipality to the District Corporation or school board, as the case may be, and, subject to subsections (2) and (3), instalments are payable on account thereof as follows:

1. A first instalment of 25 per cent of the amount payable for the same purposes in the preceding year, on or before the 31st day of March.
2. A second instalment of 25 per cent of the amount payable for the same purposes in the preceding year, on or before the 30th day of June.
3. A third instalment of 25 per cent of the amount payable for the same purposes in the preceding year, on or before the 30th day of September.
4. A fourth instalment of the balance of the entitlement for the year, on or before the 15th day of December.

(2) The District Council may by by-law provide for an alternative number of instalments and due dates for amounts payable by area municipalities to the District Corporation under subsection (1).

Alternative  
payment  
schedule

(3) If a school board having jurisdiction within the District Area has established an agreement which applies to one or more area municipalities in accordance with subsection 215 (3) of the *Education Act*, the number of instalments and due dates specified in that agreement shall apply with necessary modifications to those amounts otherwise payable to the school board under subsection (1).

Idem

R.S.O. 1980,  
c. 129

(4) An amount payable by an area municipality under subsection 75 (2) or 76 (1) or under subsection 7 (10) of the *Housing Development Act* or under subsection 46 (9) of the *Power Corporation Act* shall be credited by the District Corporation or school board to its general revenues.

General  
revenues

R.S.O. 1980,  
cc. 209, 384

## Default

(5) If an area municipality fails to make any payment as provided under subsection (1) or as altered under subsection (2) or (3), the area municipality shall pay to the District Corporation or school board, as applicable, interest on the amount past due at the rate of 15 per cent per annum, or at such lower rate as the school board or District Corporation may by by-law determine from time to time.

## Overpayment

(6) If the total amount paid for the year under subsection (1), (2) or (3) exceeds the total amount payable for that purpose in the year, the area municipality shall notify the District Corporation or the school board, as the case may be, of the amount of the overpayment and the District Corporation or school board shall forthwith pay that amount to the area municipality.

District-wide  
assessment  
update

**78.**—(1) If the Minister of Revenue considers that any parcel or parcels of real property within the District Area are assessed inequitably with respect to the assessment of any other parcel or parcels of real property in the District Area, the Minister of Revenue may direct that such changes be made in the assessment to be contained in the assessment roll next to be returned for each area municipality as will, in the opinion of the Minister of Revenue, eliminate or reduce inequalities in the assessment of real property in the District Area.

Date for new  
assessment  
roll

(2) If a direction is made under subsection (1), the Minister of Revenue may, for that purpose, name a day upon which the assessment commissioner for the District Area shall return a new assessment roll for the assessment at market value of real property in all area municipalities in the District Area.

When  
direction  
effective

(3) A direction under subsection (1) is effective upon publication of a notice of the direction in *The Ontario Gazette*.

Application  
of new  
assessment  
roll

(4) If the assessment roll of an area municipality for taxation in any year is changed pursuant to a direction of the Minister of Revenue under subsection (1),

(a) the assessment roll to be returned for that area municipality for taxation in that year shall be the assessment roll as so changed and not the assessment roll that would otherwise have been returned; and

(b) the assessment roll to be returned in each year following that year shall be the assessment roll returned under clause (a) as amended, added to, or otherwise altered under the *Assessment Act* up to

the date when the assessment roll is returned in each such following year.

(5) Notwithstanding subsection (4), if the assessor is of the opinion that an assessment to be shown on the assessment roll to be returned is inequitable with respect to the assessment of similar real property in the vicinity, the assessor may alter the value of the assessment to the extent necessary to make the assessment equitable with the assessment of such similar real property.

Exception

(6) For the purpose of every Act, the assessment roll of an area municipality returned under subsection (4) shall be deemed to be the assessment roll of the area municipality returned under the *Assessment Act*.

Status of  
assessment  
roll

R.S.O. 1980,  
c. 31

(7) In 1993 for purposes of taxation in 1994, the Minister of Revenue shall make a direction under subsection (1) for changes to be made to the assessment rolls of the area municipalities.

Mandatory  
return of  
updated roll  
in 1993

(8) In every fourth year following the most recent direction under subsection (1), the Minister of Revenue shall make a direction under subsection (1) for changes to be made to the assessment rolls of the area municipalities.

Mandatory  
return of  
updated roll  
every fourth  
year

(9) The Minister of Revenue shall not make a direction under subsection (1) unless the District Council by resolution has requested that a direction be made, but a resolution is not required for a direction of the Minister of Revenue required under subsection (7) or (8).

Resolution  
required

(10) Except as provided in subsections (1) and (11), the *Assessment Act* and the alterations, corrections, additions and amendments authorized by that Act apply to an assessment roll returned under subsection (4).

Provisions of  
R.S.O. 1980,  
c. 31

(11) Subsections 63 (1) and (3) and sections 64 and 65 of the *Assessment Act* do not apply to an area municipality or to the assessment roll of any area municipality in respect of 1989 and subsequent years.

Idem

(12) The Assessment Review Board, the Municipal Board or any court, in determining the value at which any real property shall be assessed in any complaint, appeal, proceeding or action, shall have reference to the value at which similar real property in the vicinity is assessed, and the amount of any assessment of real property shall not be altered unless the Assessment Review Board, Municipal Board or court is satisfied that the assessment is inequitable with respect to the

Powers on  
appeal



assessment of similar real property in the vicinity, and in that event the assessment of the real property shall not be altered to any greater extent than is necessary to make the assessment equitable with the assessment of such similar real property.

No amendment to collector's roll  
R.S.O. 1980, c. 31

(13) No amendment shall be made to the assessment or a collector's roll under clause 33 (a) of the *Assessment Act* until the cumulative value of the increase since the date of the most recent change to the assessment roll under a direction of the Minister of Revenue under subsection (1) is at least in the sum of \$5,000 at market value.

Table of rates for pipe lines

(14) For purposes of subsection 24 (16) of the *Assessment Act*, changes made in the assessment roll of an area municipality under a direction of the Minister of Revenue under subsection (1) shall be deemed to be an assessment update of all property within the area municipality under section 70 of the *Assessment Act*.

Rights of appeal preserved

(15) Nothing in section 74, 74a or 74b in any way deprives any person of any right of appeal provided for in the *Assessment Act* or affects the operation of subsection 36 (6) of that Act.

Direction may be retroactive

(16) A direction made under subsection (1) may be made retroactive to the 1st day of December of the year preceding the year in which it was made.

Deeming  
R.S.O. 1980, c. 302

(17) For the purposes of sections 362 and 363 of the *Municipal Act*, the District Corporation shall be deemed to be a municipality.

**3. Subsection 82 (3) of the said Act is repealed and the following substituted therefor:**

Pollution control fund

(3) The District Council shall establish and maintain a pollution control fund and shall contribute to such fund, in each year, the sum equivalent to a sum calculated at one-quarter of one mill in the dollar upon the total residential and farm assessment and commercial assessment for all area municipalities in that year.

Transition  
R.S.O. 1980, cc. 302, 129

**4. Notwithstanding subsection 164 (2) of the *Municipal Act* or subsection 216 (2) of the *Education Act*, if the amount levied by an area municipality for district purposes or school purposes in 1988 differs from the sum the area municipality ought to have levied for district purposes or school purposes, the area municipality shall debit or credit such deficit or surplus, as applicable, to the general funds of the municipality and not revise the rates to be levied for such body in 1989.**



**5.—(1)** Nothing in this Act affects the validity of an interim levy made by the District Council or by the council of an area municipality under section 76 of the *District Municipality of Muskoka Act* as it existed before the coming into force of this Act. Transition  
R.S.O. 1980,  
c. 121

**(2)** Subsections 74 (8), (9) and (10), as re-enacted by section 2 of this Act, and subsection 74c (2), as enacted by section 2 of this Act, of the *District Municipality of Muskoka Act* apply with necessary modifications to an interim levy made by the District Council in 1989. Idem

**(3)** Subsections 74d (4), (5) and (6), as enacted by section 2 of this Act, of the *District Municipality of Muskoka Act* apply with necessary modifications to an interim levy made by an area municipality in 1989. Idem

**6.—(1)** Subsection 130 (10) of the *Education Act*, being chapter 129 of the Revised Statutes of Ontario, 1980, as re-enacted by the Statutes of Ontario, 1988, chapter 23, section 8, is repealed and the following substituted therefor:

(10) This section does not apply to The Haldimand-Norfolk Roman Catholic Separate School Board, The Nipissing District Roman Catholic Separate School Board, The Simcoe County Roman Catholic Separate School Board, The Sudbury District Roman Catholic Separate School Board, The Waterloo County Roman Catholic Separate School Board or to a separate school board having jurisdiction wholly or partly in a county where an assessment update has been carried out under subsection 368b (2) of the *Municipal Act*. Non-application  
R.S.O. 1980,  
c. 302

**(2)** Subsection 214 (7) of the said Act, as enacted by the Statutes of Ontario, 1988, chapter 46, section 2, is repealed.

**(3)** Subsection 214 (17) of the said Act, as enacted by the Statutes of Ontario, 1988, chapter 46, section 2, is repealed and the following substituted therefor:

(17) Subsections (2) to (16) do not apply to an area municipality in The District Municipality of Muskoka, The Regional Municipality of Haldimand-Norfolk, The Regional Municipality of Sudbury, The Regional Municipality of Waterloo or to a local municipality in a county where an assessment update has been carried out under subsection 368b (2) of the *Municipal Act*. Non-application

**(4)** Clause 214b (2) (b) of the said Act, as re-enacted by the Statutes of Ontario, 1988, chapter 23, section 8, is repealed and the following substituted therefor:

- (b) The District Municipality of Muskoka, The Regional Municipality of Haldimand-Norfolk or The Regional Municipality of Waterloo.

(5) Subsection 214b (4) of the said Act, as enacted by the Statutes of Ontario, 1987, chapter 17, section 3, is amended by striking out “The Regional Municipality of Haldimand-Norfolk” in the ninth and tenth lines and inserting in lieu thereof “The District Municipality of Muskoka, The Regional Municipality of Haldimand-Norfolk or The Regional Municipality of Waterloo”.

(6) Subsection 222 (4) of the said Act, as re-enacted by the Statutes of Ontario, 1988, chapter 23, section 8, is repealed and the following substituted therefor:

Non-application

(4) Subsection (2) does not apply to an area municipality in The District Municipality of Muskoka, The Regional Municipality of Haldimand-Norfolk, The Regional Municipality of Sudbury, The Regional Municipality of Waterloo or a local municipality in a county where an assessment update has been carried out under subsection 368b (2) of the *Municipal Act*.

(7) Section 225 of the said Act, as re-enacted by the Statutes of Ontario, 1988, chapter 23, section 8, is repealed and the following substituted therefor:

Conflict

R.S.O. 1980,  
cc. 121, 435,  
441, 442,  
302

**225.** In the event of a conflict between any provision in sections 220 to 224 and any provision in any other Act, other than the *District Municipality of Muskoka Act*, the *Regional Municipality of Haldimand-Norfolk Act*, the *Regional Municipality of Sudbury Act*, the *Regional Municipality of Waterloo Act* and section 368d of the *Municipal Act*, the provisions in sections 220 to 224 prevail.

Commencement

**7.** This Act shall be deemed to have come into force on the 1st day of January, 1989.

Short title

**8.** The short title of this Act is the *District Municipality of Muskoka Statute Law Amendment Act, 1989*.





# Bill 35

**An Act respecting the  
amalgamation of the City of Sarnia and the  
Town of Clearwater and the addition of the  
amalgamated City to the County of Lambton**

The Hon. J. Eakins  
*Minister of Municipal Affairs*



*1st Reading*      June 20th, 1989

*2nd Reading*

*3rd Reading*

*Royal Assent*



### EXPLANATORY NOTES

The purpose of the Bill is to amalgamate the City of Sarnia with the Town of Clearwater on the 1st day of January, 1991 and to make the amalgamated City part of the County for municipal purposes.

The council of the amalgamated City shall consist of eight members, elected on a ward basis, four of whom shall also sit on County Council. The council of the County shall consist of the mayor of each local municipality and the four members elected by ward from the City. The distribution of votes on County Council is set out in subsection 18 (2).

Under Part VII certain powers that are usually conferred on local municipalities may, if prescribed by the Minister, be assumed by the County. The County is also responsible for waste management, county roads and certain other roads described in section 54, health and social services and public libraries.

A board of arbitrators is appointed under section 80 to deal with disputes in respect of any adjustments of assets and liabilities that result from the amalgamation and transfer of responsibilities.

Bill 35

1989

**An Act respecting the  
amalgamation of the City of Sarnia and the  
Town of Clearwater and the addition of the  
amalgamated City to the County of Lambton**

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HER MAJESTY, by and with the advice and consent of the Legislative Assembly of the Province of Ontario, enacts as follows:

**Definitions**

**1. In this Act,**

“City” means The Corporation of the City of Sarnia-Clearwater as created by the amalgamation of the former municipalities under section 2;

“City of Sarnia” means the former municipality of The Corporation of the City of Sarnia;

“County” means The Corporation of the County of Lambton;

“County Council” means the council of the County;

“former municipalities” means The Corporation of the City of Sarnia and The Corporation of the Town of Clearwater as they existed before the 1st day of January, 1991;

“local municipality” means a city, town, village and township forming part of the County for municipal purposes but does not include a former municipality;

“Minister” means the Minister of Municipal Affairs;

“Municipal Board” means the Ontario Municipal Board;

“municipality” means a municipality, as defined in the *Municipal Affairs Act*, and a metropolitan, regional or district municipality and the County of Oxford or a local board of a metropolitan, regional or district municipality or of the County of Oxford; R.S.O. 1980,  
c. 303

“pre-election period” means the period from the 1st day of January, 1991 until the 30th day of November, 1991, inclusive;

“prescribed” means prescribed by regulations made under this Act;

“Town of Clearwater” means the former municipality of The Corporation of the Town of Clearwater.

## PART I

### LOCAL MUNICIPALITIES

**2.—(1)** On the 1st day of January, 1991, The Corporation of the City of Sarnia and The Corporation of the Town of Clearwater are amalgamated under the name of “The Corporation of the City of Sarnia-Clearwater”. Amalgamation

**(2)** Despite section 5 of the *Territorial Division Act*, the City forms part of the County for municipal purposes. City forms part of County  
R.S.O. 1980,  
c. 497

**(3)** The City shall not apply for the annexation or amalgamation of any land before the 1st day of January, 2016, unless the County Council and the council of every local municipality the lands of which are part of the proposed annexation or amalgamation agree, by resolution, to the proposed application being made. Future amalgamation, annexation by agreement

Name of City  
to be put to  
a vote

**3.—**(1) The City shall submit the question “Do you want the new City to be named Sarnia” to the electors of the City at the 1991 regular election.

Change of  
name

(2) If the majority of votes cast in response to the question are in the affirmative, the name of the City shall become The Corporation of the City of Sarnia effective the 1st day of January, 1992.

Idem

(3) After the 1st day of January, 1992, the Minister may by order alter the name of the City.

Composition  
of interim  
City council  
R.S.O. 1980,  
c. 302

**4.—**(1) Despite subsection 30 (1) of the *Municipal Act*, during the pre-election period, the council of the City shall be composed of,

- (a) a mayor, who shall be the person who was the mayor of the City of Sarnia on the 31st day of December, 1990;
- (b) a deputy mayor, who shall be the person who was the mayor of the Town of Clearwater on the 31st day of December, 1990;
- (c) a reeve, who shall be the person who was the reeve of the Town of Clearwater on the 31st day of December, 1990;
- (d) a deputy reeve, who shall be the person who was the deputy reeve of the Town of Clearwater on the 31st day of December, 1990; and
- (e) twelve other members,
  - (i) eight of whom shall be the persons who were the members of the council, except the mayor, of the City of Sarnia on the 31st day of December, 1990, and
  - (ii) four of whom shall be the persons who were the members of the council, except the mayor, reeve and deputy reeve, of the Town of Clearwater on the 31st day of December, 1990.

First meeting

(2) The first meeting of the council shall be held not later than the 8th day of January, 1991.

One vote

(3) Each member of council has one vote.



(4) Despite section 72 of the *Municipal Act*, if the mayor of the City is absent from the municipality or is unable or unwilling to act or the office of mayor is vacant, the deputy mayor shall act in the place of the mayor and, while so acting, has all the rights and powers of the mayor.

Acting mayor  
R.S.O. 1980,  
c. 302

**5.**—(1) The City shall consist of four wards as described in the Schedule.

Wards

(2) All wards in the former municipalities are dissolved.

Dissolution  
of former  
wards

**6.**—(1) Despite sections 30, 31, 32, 34 and 36 of the *Municipal Act*, but subject to section 7, the council of each local municipality shall be composed of a mayor, who shall be elected by a general vote of the electors of the local municipality and who shall be the head of the council, and the following other members:

Composition  
of councils

1. The City—eight members consisting of,
  - i. four members who shall be elected by wards, one from each ward, as members of the council of the City and of the County Council, and
  - ii. four members who shall be elected by wards, one from each ward, as members of the council of the City.
2. A town—six members who shall be elected by a general vote of the electors of the town.
3. A township—four members who shall be elected by a general vote of the electors of the township.
4. A village—four members who shall be elected by a general vote of the electors of the village.

(2) Each member of the council of a local municipality has one vote.

One vote

**7.**—(1) Upon the application of a local municipality under subsection 13 (2) of the *Municipal Act*, or upon the petition of electors under subsection 13 (3) of that Act, the Municipal Board may, by order,

O.M.B.  
order

- (a) divide or redivide the local municipality into wards and designate the name or number each ward shall bear and declare the date when the division or redivision takes effect;

- (b) alter or dissolve any or all of the wards in the local municipality and declare the date when the alteration or dissolution takes effect; and
- (c) vary the composition of the council of the local municipality.

Limitation on  
order

(2) No order made under subsection (1),

- (a) shall take effect before the 1st day of December, 1994; or
- (b) shall alter the total number of members who represent the local municipality on the County Council or the number of votes assigned to the members under this Act.

Idem

(3) Despite subsection (1), the mayor of the local municipality shall continue to be elected by a general vote of the electors of the local municipality and shall be the head of council of the local municipality and a member of the County Council.

Where  
inquiry by  
Minister

(4) Where the Minister is inquiring into the structure, organization and methods of operation of a local municipality or the County, the Minister may give notice to the Municipal Board of the inquiry and request that any application or petition made under subsection (1) be deferred until the inquiry has been completed.

Idem

(5) If notice is given under subsection (4), all proceedings in the application or petition are stayed until the Minister gives notice to the Municipal Board that they may be continued.

No board of  
control

(6) A local municipality shall not have a board of control.

By-laws,  
resolutions of  
former  
municipalities

**8.—(1)** Every by-law and resolution of a former municipality shall be deemed to be a by-law or resolution of the City and shall remain in force in the area of the former municipality until the earlier of,

- (a) the date it is amended or repealed by the council of the City; or
- (b) the 31st day of December, 1992.

By-laws,  
official plans  
under  
1983, c. 1

(2) Despite subsection (1), any by-law of a former municipality passed under section 34 of the *Planning Act, 1983*, or a predecessor of that section, and any official plan of a former

municipality approved under the *Planning Act, 1983*, or a predecessor of that Act, shall remain in force until amended or repealed. 1983, c. 1

(3) If a former municipality has commenced procedures to enact a by-law that requires the approval of a minister of the Crown, the Municipal Board or a provincial agency and the approval has not been obtained before the 31st day of December, 1990, the council of the City may continue the procedures to enact the by-law and subsection (1) applies with necessary modifications to the by-law. By-laws that require approval

(4) Nothing in this section repeals or authorizes the amendment or repeal of, By-laws, resolutions not affected

(a) by-laws or resolutions of the former municipalities passed under section 45, 58 or 61 of the *Drainage Act* or a predecessor of those sections; and R.S.O. 1980, c. 126

(b) by-laws or resolutions conferring rights, privileges, franchises, immunities or exemptions that could not have been lawfully repealed by the councils of the former municipalities.

**9.** Except as otherwise provided in this Act, the assets and liabilities of the former municipalities and their local boards become assets and liabilities of the City or a local board thereof without compensation, and the City and its local boards stand in the place of the former municipalities and their local boards. Assets and liabilities transferred to City

**10.** All taxes, charges or rates levied by a former municipality under any general or special Act that are due and unpaid on the 31st day of December, 1990 shall, after that date, be taxes, charges or rates due and payable to the City and may be collected and recovered by the City as if the taxes, charges or rates had been imposed by the City. Taxes, charges, rates transferred to City

**11.—(1)** Subject to subsection (4), on the 1st day of January, 1991, the committees of adjustment of the former municipalities are dissolved. Dissolution of committees of adjustment

(2) The City shall establish a committee of adjustment under section 43 of the *Planning Act, 1983*. City to establish committee of adjustment

(3) All applications to the committees of adjustment of the former municipalities shall be deemed to be applications to and shall be continued by the committee of adjustment of the City. Applications continued

Continuing  
matters

(4) The committees of adjustment dissolved under subsection (1) and the terms of office of the members of the committees shall continue to the 31st day of January, 1991 for the purpose of making a decision on any application for which a hearing is completed before the 1st day of January, 1991.

Dissolution  
of  
committees,  
boards under  
1982, c. 7,  
R.S.O. 1980,  
cc. 80, 417

**12.**—(1) The council of the City shall be deemed to be a recreation committee under the *Ministry of Tourism and Recreation Act, 1982*, a committee of management of a community recreation centre under the *Community Recreation Centres Act* and a board of park management under the *Public Parks Act* and all such committees and boards of the former municipalities are dissolved on the 1st day of January, 1991.

Idem

(2) All by-laws and resolutions of the boards and committees dissolved under subsection (1) are continued as by-laws and resolutions of the City, and shall remain in force until the earlier of,

(a) the date they are amended or repealed by the City;  
or

(b) the 31st day of December, 1992.

Certain  
by-laws,  
resolutions  
continue

(3) Nothing in this section repeals or authorizes the amendment or repeal of by-laws or resolutions conferring rights, privileges, franchises, immunities or exemptions that could not have been lawfully repealed by the boards and committees dissolved under subsection (1).

Repeal of  
certain  
by-laws,  
resolutions,  
appointments

**13.**—(1) Despite section 8,

(a) the by-laws and resolutions of the City of Sarnia establishing and appointing members to the Canada Day Committee, Committee of Parks and Recreation, Committee of Management of Marshall Gowland Manor, Planning Advisory Committee, Sarnia Heritage Committee and the Sarnia Museum Board, all of the City of Sarnia, are repealed;

(b) the by-laws and resolutions of the Town of Clearwater establishing and appointing members to the Planning Advisory Committee of the Town of Clearwater are repealed; and

(c) the terms of office of the appointees of the City of Sarnia to the Property Standards Committee of the City of Sarnia are terminated.



(2) Nothing in this section prevents the City from or relieves the City of any responsibility for establishing or making appointments to boards and committees. Appointments

**14.**—(1) Despite section 8, the City, on or before the 31st day of January, 1991, shall, Fire departments

(a) repeal the by-laws of the City of Sarnia and the Town of Clearwater establishing their respective fire departments; and

(b) establish a fire department for the City.

(2) Every person who is a member of the fire department of the City of Sarnia or the Town of Clearwater on the 1st day of July, 1990 and continues to be a member until the 31st day of December, 1990 becomes a member of the fire department established under clause (1) (b). Fire fighters

(3) In subsection (2), “member” means a full-time fire fighter and a volunteer fire fighter as defined in the *Fire Departments Act*. Definition  
R.S.O. 1980,  
c. 164

**15.** Except as otherwise provided in this Act, the City or a local board thereof shall offer to employ every person who was employed by a former municipality or a local board thereof on the 1st day of July, 1990 and who continued to be so employed until the 31st day of December, 1990. Offer of employment

**16.**—(1) The Police Village of Inwood and the Police Village of Florence are dissolved on the 1st day of January, 1991. Dissolution of police villages

(2) The Municipal Board, upon the application of a local municipality or a local board thereof or of its own motion, may exercise the powers under section 25 of the *Municipal Act* consequent upon the dissolutions. Further powers  
R.S.O. 1980,  
c. 302

(3) Sections 94 and 95 of the *Ontario Municipal Board Act* do not apply to decisions or orders made in the exercise of the powers under subsection (2). No further appeal  
R.S.O. 1980,  
c. 347

## PART II

### COUNTY COUNCIL

**17.** This Part applies despite sections 27, 28 and 29 of the *Municipal Act*. Application  
R.S.O. 1980,  
c. 302



Interim  
County  
Council

**18.**—(1) During the pre-election period, the County Council shall have thirty-seven members consisting of,

- (a) the mayor, reeve and deputy reeve of the City;
- (b) the reeve of the Village of Alvinston, the Village of Arkona, the Village of Oil Springs and the Village of Thedford; and
- (c) the reeve and deputy reeve of the Town of Forest, the Town of Petrolia, the Village of Grand Bend, the Village of Point Edward, the Village of Watford, the Village of Wyoming, the Township of Bosanquet, the Township of Brooke, the Township of Dawn, the Township of Enniskillen, the Township of Euphemia, the Township of Moore, the Township of Plympton, the Township of Sombra and the Township of Warwick.

Distribution  
of votes

(2) The members of the County Council under subsection (1) shall have a total of seventy-three votes of which,

- (a) the mayor of the City shall have ten votes;
- (b) the reeve and deputy reeve of the City shall each have nine votes;
- (c) the reeve of the Township of Bosanquet and the Township of Moore shall each have three votes;
- (d) the reeve of the Town of Petrolia, the Township of Enniskillen, the Township of Plympton and the Township of Sombra shall each have two votes;
- (e) the deputy reeve of the Township of Bosanquet, the Township of Moore and the Township of Plympton shall each have two votes; and
- (f) all other members shall have one vote.

First meeting

(3) The first meeting of the County Council shall be held after the council of the City has held its first meeting under subsection 4 (2) but, in any event, not later than the 15th day of January, 1991.

Warden  
R.S.O. 1980,  
c. 302

(4) Despite subsection 51 (1) of the *Municipal Act*, the County Council established under subsection (1) shall, at the first meeting at which a majority of the members is present, elect one of its members to be warden.

(5) The term of the warden of the County holding office on the 30th day of November, 1990 is extended until a new warden is elected under subsection (4).

Term of  
office

**19.**—(1) The County Council shall be composed of,

Composition  
of County  
Council

(a) the mayor of each local municipality; and

(b) the four county ward members of the council of the City.

(2) The members of the County Council under subsection (1) shall have a total of thirty-seven votes of which,

Distribution  
of votes

(a) the mayor and each county ward member of the council of the City shall have three votes;

(b) the mayor of the Township of Bosanquet, the Township of Moore and the Township of Plympton shall each have two votes; and

(c) all other members shall have one vote.

(3) The County Council shall review the distribution of votes under subsection (2) on or before the 1st day of January, 2001.

Review

**20.** The warden of the County Council shall bear the title of county warden.

County  
warden

**21.** The seat of a mayor of a local municipality and the seat of a county ward member of the council of the City becomes vacant if his or her seat on the County Council is declared vacant by the County Council.

Vacancies

**22.** The County or a local board thereof shall offer to employ every person who, on the 1st day of July, 1990, was employed in any undertaking carried on by or on behalf of any former or local municipality or local board thereof that is assumed by the County or a local board thereof under this Act and who continues to be so employed until the 31st day of December, 1990.

Offer of  
employment

**23.**—(1) Every by-law and resolution of a former or local municipality in respect of any undertaking carried on by or on behalf of a former or local municipality that is assumed by the County under this Act shall be deemed to be a by-law or resolution of the County and shall remain in force in the area of the former or local municipality until the earlier of,

By-laws,  
resolutions  
continued

- (a) the date it is amended or repealed by the council of the County; or
- (b) the 31st day of December, 1992.

By-laws that  
require  
approval

(2) If a former or local municipality has commenced procedures to enact a by-law that requires the approval of a minister of the Crown, the Municipal Board or a provincial agency and the approval has not been obtained before the 31st day of December, 1990, the council of the County may continue the procedures to enact the by-law and subsection (1) applies with necessary modifications to the by-law.

By-laws,  
resolutions  
not affected

(3) Nothing in this section repeals or authorizes the amendment or repeal of by-laws or resolutions conferring rights, privileges, franchises, immunities or exemptions that could not have been lawfully repealed by the councils of the former municipalities.

Assets and  
liabilities  
transferred to  
County

**24.** All assets and liabilities of a former or local municipality or a local board thereof in respect of any undertaking carried on by or on behalf of any former or local municipality or local board thereof that is assumed by the County or a local board thereof under this Act become assets and liabilities of the County or a local board thereof without compensation, and the County and its local boards stand in the place of the former or local municipalities and their local boards.

### PART III

#### FORMER MUNICIPALITIES

Agreement

**25.—**(1) The City of Sarnia and the Town of Clearwater shall enter into an agreement with respect to,

- (a) fee structures;
- (b) capital improvements;
- (c) the adequacy of public buildings;
- (d) maintenance of current levels of services;
- (e) shared capital expenditures;
- (f) impost fees;
- (g) capital improvements;
- (h) cash in lieu of parkland;

- (i) organizational structures;
- (j) the financing of capital expenditures;
- (k) capital budgets;
- (l) equipment reserve accounts;
- (m) contributions to reserve accounts;
- (n) shoreline protection;
- (o) public transit;
- (p) rural water supply;
- (q) water meters; and
- (r) major recreation complexes.

(2) The councils of the County, the City of Sarnia and the Town of Clearwater shall establish a joint implementation committee to make recommendations with respect to the agreement and any other matter set out in this Act.

Joint  
committee

(3) The joint committee shall submit its recommendations to the Minister on or before the 1st day of May, 1990.

Recommen-  
dations to be  
submitted to  
Minister

(4) Subject to any other Act, the Lieutenant Governor in Council may, upon the recommendation of the Minister, by order give effect to any recommendation of the joint committee.

Order  
effecting  
recommen-  
dations

## PART IV

### SARNIA HYDRO

**26.**—(1) A hydro-electric power commission for the City is hereby established on the 1st day of January, 1991 and shall be deemed to be a commission established under Part III of the *Public Utilities Act* and a municipal commission within the meaning of the *Power Corporation Act*.

Hydro  
commission

R.S.O. 1980,  
cc. 423, 384

(2) Despite section 41 of the *Public Utilities Act*, the hydro-electric power commission shall,

Composition  
of  
commission

(a) during the pre-election period, be composed of,

- (i) the members of the commission dissolved under subsection (5), and

- (ii) the deputy mayor and reeve of the City; and
- (b) after the pre-election period, be composed of,
  - (i) the mayor of the City, and

R.S.O. 1980,  
c. 308

- (ii) four other members who are qualified electors in the City under the *Municipal Elections Act* who shall be elected by a general vote of the electors of the City.

Term of  
office

(3) A member of the commission shall hold office for the same term as the members of council or until the successor of the member is elected or appointed.

Delegate of  
mayor

(4) The council of the City may by by-law, passed with the written consent of the mayor, appoint a delegate from among the members of the council to represent the mayor on the commission.

Dissolution

(5) The Hydro-Electric Commission of the City of Sarnia is dissolved on the 1st day of January, 1991.

Transfer of  
assets,  
liabilities

(6) On the 1st day of January, 1991, the assets of the Town of Clearwater, the assets under the control and management of the commission dissolved under subsection (5) and the liabilities of the Town of Clearwater and of such commission that relate to the distribution and supply of electrical power become assets under the control and management of and liabilities of the commission established under subsection (1), without compensation.

Purchase of  
retail  
distribution  
facilities from  
Ontario  
Hydro

(7) On the 1st day of January, 1991, the commission established under subsection (1) shall acquire the retail distribution facilities within the Town of Clearwater used by Ontario Hydro on the 31st day of December, 1990 in the retail distribution of power, including equipment leased by Ontario Hydro to retail customers within the Town of Clearwater for the use of such power, and the price of the facilities shall be equal to the original cost of the facilities less the sum of the accumulated net retail equity of the customers supplied with power through the facilities and the accumulated depreciation associated with the facilities.

Definitions

(8) In subsection (7),

“accumulated net retail equity” means the portion of the equity accumulated through debt retirement appropriations recorded for the rural power district relating to Ontario Hydro’s rural retail system plus the portion of the balance



recorded for rural retail customers in the Stabilization of Rates and Contingencies Account, in the books of Ontario Hydro;

“retail distribution facilities” means works for the transmission and supply of power at voltages less than 50 kilovolts other than works located within a transformer station that transforms power from voltages greater than 50 kilovolts to voltages less than 50 kilovolts.

(9) All by-laws and resolutions of the Town of Clearwater and of the commission dissolved under subsection (5) that relate to the distribution and supply of electrical power are continued as by-laws and resolutions of the commission established under subsection (1), and shall remain in force until the earlier of,

Continuation  
of by-laws,  
resolutions

(a) the date they are amended or repealed by the commission; or

(b) the 31st day of December, 1992.

(10) Nothing in this section repeals or authorizes the amendment or repeal of by-laws or resolutions conferring rights, privileges, franchises, immunities or exemptions that could not have been lawfully repealed by the Town of Clearwater or by the commission dissolved under subsection (5).

Certain  
by-laws,  
resolutions  
remain  
effective

## PART V

### POLICE

**27.—**(1) On the 1st day of January, 1990, The Board of Commissioners of Police of the City of Sarnia and The Board of Commissioners of Police of the Town of Clearwater are amalgamated and the new board shall be deemed to be a board established under section 8 of the *Police Act*.

Boards of  
Commis-  
sioners of  
Police

R.S.O. 1980,  
c. 381

(2) Despite section 8 of the *Police Act*, from the 1st day of January, 1990 to the 30th day of November, 1991, inclusive, the board shall be composed of the members of the boards amalgamated under this section.

Interim  
board

(3) On and after the 1st day of December, 1991, the board shall be composed of those members provided for under section 8 of the *Police Act*.

Composition  
of board

- Temporary name (4) During 1990, the board shall be called "The Board of Commissioners of Police of the City of Sarnia and the Town of Clearwater".
- Police service (5) During 1990, the board is responsible for providing police service for the City of Sarnia and the Town of Clearwater and, for the purpose of exercising its powers under any general or special Act, the City of Sarnia and the Town of Clearwater shall be deemed to be amalgamated as a city municipality.
- Idem (6) On and after the 1st day of January, 1991, the board is responsible for providing police service for the City.
- Local board **28.**—(1) During 1990, the board shall be deemed to be a local board of the City of Sarnia and not of the Town of Clearwater.
- Rights protected (2) Despite subsection (1), a resident or elector of the Town of Clearwater has the same rights and privileges as a resident or elector of the City of Sarnia relating to police matters.
- Transfer to City (3) On the 1st day of January, 1991, the board shall continue as the board of commissioners of police of the City and a local board of the City.
- Estimates  
R.S.O. 1980,  
c. 381 **29.**—(1) The board shall, in preparing its 1990 estimates under subsection 14 (2) of the *Police Act*, show separately the amount required to provide police service in the Town of Clearwater and in the City of Sarnia.
- Idem (2) The amount of the estimates for providing police service in the Town of Clearwater shall be deemed to be a debt of the Town of Clearwater falling due in 1990 for the purposes of section 164 of the *Municipal Act*, and the Town of Clearwater shall pay this amount to the City of Sarnia no later than the 30th day of June, 1990.
- R.S.O. 1980,  
c. 302
- Disagree-  
ments (3) If there is a disagreement between the City of Sarnia and the Town of Clearwater on how the estimates are broken down under subsection (1), the City of Sarnia or the Town of Clearwater may refer the matter to the Ontario Police Commission and the decision of the Ontario Police Commission is final.
- Transfer of  
assets,  
liabilities **30.** On the 1st day of January, 1990, the assets under the control and management of the boards amalgamated under subsection 27 (1) and all liabilities of such boards become

assets under the control and management of and liabilities of the board, without compensation.

**31.**—(1) On the 1st day of January, 1990, all by-laws and resolutions of the boards amalgamated under subsection 27 (1) are continued as by-laws and resolutions of the board and shall remain in force in the former municipality for which they were passed until the earlier of,

Continuation  
of by-laws,  
resolutions

(a) the date they are amended or repealed by the board; or

(b) the 31st day of December, 1990.

(2) Nothing in this section repeals or authorizes the amendment or repeal of by-laws or resolutions conferring rights, privileges, franchises, immunities or exemptions that could not have been lawfully repealed by the boards amalgamated under subsection 27 (1).

Certain  
by-laws,  
resolutions  
remain  
effective

**32.** On and after the 1st day of January, 1991, the board and the members of the police force of the City shall have the same duties with respect to by-laws of the County as they do with respect to by-laws of the City.

Responsi-  
bility for  
County  
enforcement

**33.** Every person who is a member of the police force of the Town of Clearwater or of the police force of the City of Sarnia on the 1st day of July, 1989, and who continues to be a member until the 31st day of December, 1989, becomes on the 1st day of January, 1990 a member of the police force created by the amalgamation under subsection 27 (1).

Transfer of  
police  
personnel

## PART VI

### BOUNDARY ADJUSTMENTS

**34.**—(1) This Part applies to applications made to the Minister under section 2 of the *Municipal Boundary Negotiations Act, 1981*, that are being processed on the day this Part comes into force, and to future applications made under that section before the 1st day of January, 1991, to resolve an intermunicipal boundary issue or an intermunicipal boundary-related issue in the County.

Application  
of  
1981, c. 70

(2) Subsection (1) does not apply to an issue involving a boundary of the County unless, in the opinion of the Minister, that issue is of a minor nature.

Idem

1981, c. 70  
does not  
apply

(3) Except as otherwise provided in this Part, the *Municipal Boundary Negotiations Act, 1981* does not apply to an application to which this Part applies.

Exception

(4) Sections 15 to 21 of the *Municipal Boundary Negotiations Act, 1981* apply with necessary modifications to an application to which this Part applies and to an order made under section 40.

Boundary  
application  
committee

**35.—**(1) The warden of County Council shall, within thirty days of this Part coming into force, appoint a boundary application committee.

Composition  
of committee

(2) The committee shall have five members consisting of,

- (a) the warden;
- (b) two members of County Council representing towns or villages; and
- (c) two members of County Council representing townships.

Presiding  
officer

(3) The members of the committee shall appoint a presiding officer.

Guidelines

**36.** The committee shall establish guidelines for considering boundary applications in consultation with the Ministry of Municipal Affairs.

Duties of  
committee

**37.—**(1) For each application to which this Part applies, the committee shall, having regard for the guidelines established under section 36,

- (a) determine and inquire into the issues raised by the application;
- (b) determine the party municipalities which have a substantial interest in the issues raised; and
- (c) obtain the opinion of the party municipalities and of any local board that the committee considers is affected by the application, on the issues raised by the application.

Idem

(2) Subject to subsections (4) and (5), the committee shall prepare and submit to County Council a report setting out,

- (a) the issues;



- (b) the party municipalities in respect of each issue;
- (c) the extent of agreement or disagreement on the issues;
- (d) any agreement the party municipalities have reached on any of the issues;
- (e) the recommendations of the committee on how the issues raised by the application should be resolved; and
- (f) any other matters the committee considers appropriate.

(3) The committee may make recommendations under clause (2) (e) with respect to, Recommendations

- (a) the matters set out in paragraphs 1 to 24 of section 14 of the *Municipal Boundary Negotiations Act*, 1981, c. 70, 1981;

- (b) the name of a local municipality; and

- (c) in the event the committee recommends an amalgamation, how the County Council votes of the mayors of the municipalities being amalgamated should be distributed to the local municipalities, other than the City, that would exist after such amalgamation.

(4) The committee shall, before preparing its report, hold at least one public meeting for the purpose of obtaining information, comments or opinions regarding the application. Public meeting

(5) The committee shall, after preparing its report and before submitting it to County Council, hold at least one public meeting for the purpose of obtaining submissions and comments from the public in respect of the contents of the report. Idem

(6) The committee may amend its report after the public meeting required under subsection (5) and before submitting it to County Council. Amendments to report

(7) Notice of a public meeting required under subsection (4) or (5) shall be given at least fifteen days in advance of each meeting by publishing it in a newspaper having general circulation in the party municipalities. Notice of meeting



County  
proposal

**38.**—(1) The County Council shall consider the report of the committee and shall, within sixty days after receiving the report and having regard to the guidelines established by the committee under section 36, submit to the Minister a proposal with respect to the resolution of the issues raised by the application.

Recommen-  
dations

(2) The proposal may contain recommendations with respect to the matters set out in subsection 37 (3).

Action by  
Minister

**39.** The Minister shall, within sixty days of receipt of the proposal,

- (a) submit to the Lieutenant Governor in Council a recommendation with respect to one or more of the matters set out in subsection 37 (3);
- (b) refer any issue back to County Council or the committee for further consideration;
- (c) terminate further consideration of the application;
- (d) refer any issue to the Municipal Board to hear any party municipality and, after a hearing, to make recommendations thereon; or
- (e) take such other action as the Minister considers appropriate.

Order

**40.** Upon receipt of the recommendation of the Minister, the Lieutenant Governor in Council may by order provide for one or more of the matters set out in subsection 37 (3).

## PART VII

### ASSUMPTION OF LOCAL POWERS BY THE COUNTY

Local power

**41.**—(1) In this Part, “local power” means a power that is conferred by any general or special Act on local municipalities or local boards thereof and that is prescribed by the Minister.

Assumption  
of local  
power

(2) The County Council may pass by-laws to assume any local power for all of the local municipalities.

Double  
majority vote

(3) No by-law under subsection (2) shall be passed or repealed unless,

- (a) a majority of all the votes on County Council are cast in its favour; and

- (b) members of County Council representing a majority of the local municipalities cast their votes in its favour.

(4) For the purpose of clause (3) (b), the members of County Council representing the City shall only be considered to have cast their votes in favour of a by-law if at least three of the City representatives cast their votes in its favour. Idem

(5) When a by-law passed under subsection (2) comes into effect, Effect of by-law

- (a) the County is responsible for the local powers assumed by the County in all of the local municipalities;

- (b) the County has the powers conferred by any general or special Act upon the local municipalities or local boards thereof related to the local powers assumed by the County;

- (c) no local municipality shall exercise the local powers assumed by the County and any by-law or other measure of a local municipality under that power is of no effect; and

- (d) no local municipality shall provide any service or facility under the local power assumed by the County within the County without the consent of County Council, which consent may be given upon such conditions, including the payment of compensation, as may be agreed upon.

(6) If consent is refused under clause (5) (d) or the council of the local municipality and the County Council fail to agree on the conditions related to the consent, the applicant may appeal to the Municipal Board which shall hear and determine the matter. Appeal to O.M.B.

(7) The Municipal Board may impose such conditions as it considers appropriate and the decision of the Municipal Board is final. Decision of Board final

(8) Section 94 of the *Ontario Municipal Board Act* does not apply to a decision made under subsection (7). No further appeal  
R.S.O. 1980,  
c. 347

**42.**—(1) All rights, obligations, assets and liabilities of a local municipality or local board thereof pertaining to the local powers assumed by the County are vested in the County and financial adjustments, calculated in accordance with such Transfer of rights, obligations, etc.

criteria as may be prescribed, shall be made between the County and the local municipalities or local boards thereof.

Assumption  
by County of  
debt

(2) The County shall pay to the local municipality or local board thereof on or before the due date all amounts of principal and interest becoming due upon any outstanding debt of that local municipality or local board in respect of the local powers assumed by the County.

Interest

(3) If the County fails to make any payment required under subsection (2) on or before the due date, the local municipality or local board may charge the County interest at the rate of 15 per cent per annum, or such lower rate as the local municipality or local board determines, from the due date until payment is made.

Agreements

**43.**—(1) If a local municipality or local board thereof had entered into an agreement with any municipality or other person in respect of the local power assumed by the County, the County shall be bound by the agreement and the local municipality or local board thereof is relieved of all liability under the agreement.

Idem

(2) The County Council may enter into agreements with any municipality or other person for establishing, constructing, operating or managing, at their joint expense and for their joint benefit, any service or facility that is within the jurisdiction of the County Council as a result of the passage of the by-law under subsection 41 (2).

Rates  
R.S.O. 1980,  
c. 302

**44.**—(1) Despite sections 368 and 368e of the *Municipal Act*, the County Council may by by-law provide for imposing on and collecting from the local municipalities for which it is providing services or facilities under the assumed local powers a rate sufficient to pay the whole, or such portion as the by-law may specify, of the expenditures and capital costs including debenture charges related to the services or facilities and such rate may vary on any basis the County Council considers appropriate and specifies in the by-law.

Idem

(2) All rates under subsection (1) constitute a debt of the local municipality to the County and are payable at such times and in such amounts as may be specified by by-law of the County Council.

Collection of  
rates

(3) Despite sections 368 and 368e of the *Municipal Act*, a local municipality may,

- (a) pay the whole or part of the amount chargeable to it under this section out of its general funds;

- (b) pass by-laws for collecting the whole or part of the amount chargeable to it under this section in the same manner as that local municipality could have collected the amount if the local power had not been assumed by the County; and
- (c) include the whole or any part of an amount chargeable to it under this section as part of the cost of an urban service within an urban service area established in the local municipality under any general or special Act.

**45.—**(1) When a by-law under subsection 41 (2) is repealed, Repeal of  
by-law

- (a) the local powers assumed by the County revert to the local municipalities and local boards thereof as they exist on the day the by-law is repealed;
- (b) all rights, obligations, assets and liabilities of the County or local board thereof pertaining to the local powers are vested in the local municipalities or local boards thereof;
- (c) financial adjustments, calculated in accordance with such criteria as may be prescribed, shall be made between the County or local board thereof and the local municipalities or local boards thereof; and
- (d) the local municipalities or local boards thereof shall pay to the County or local board thereof on or before the due date all amounts of principal and interest becoming due upon any outstanding debt of the County or local board thereof in respect of the local powers reverting to the local municipalities or local boards thereof.

(2) If the local municipalities or local boards thereof fail to make any payment required under clause (1) (d) on or before the due date, the County or local board thereof may charge the local municipalities or local boards thereof interest at the rate of 15 per cent per annum, or such lower rate as the County or local board thereof determines, from the due date until payment is made. Interest

(3) If the County or local board thereof had entered into an agreement with any municipality or other person in respect of the local power reverting to the local municipalities or local boards thereof, the local municipalities or local boards thereof Agreements



are bound by the agreement and the County or local board thereof is relieved of all liability under the agreement.

Disputes

**46.**—(1) If a dispute arises in respect of the financial adjustments or the vesting of assets and liabilities under subsection 42 (1) or clause 45 (1) (b), or the transfer of agreements under subsection 43 (1) or subsection 45 (3), the County, local municipality or local board affected may apply to the Municipal Board for a resolution of the dispute and the Municipal Board shall hear and determine the matter and its decision is final.

R.S.O. 1980,  
c. 347, s. 94  
does not  
apply

(2) Section 94 of the *Ontario Municipal Board Act* does not apply to a decision made under subsection (1).

Regulations

**47.**—(1) The Lieutenant Governor in Council may make regulations,

- (a) providing for the security of employment, the protection of benefits, including seniority and pensions, and early retirement options for employees affected by by-laws passed or repealed under this section;
- (b) prescribing the criteria for determining the amount of and the manner of payment of the financial adjustments under subsections 42 (2) and 45 (1) and for providing which body shall pay and which body shall receive the payments made under those subsections.

Minister's  
order

(2) The Minister may by order prescribe the local powers to which this Part applies.

## PART VIII

### WASTE DISPOSAL

Definition

**48.** In this Part, “waste” means garbage, refuse, domestic waste, industrial solid waste or municipal refuse and such other waste as may be designated by by-law of the County Council.

County waste  
facilities

**49.**—(1) On and after the 1st day of January, 1991, the County shall provide facilities for receiving, dumping and disposing of waste and no local municipality or local board thereof shall provide such facilities.

County  
powers

(2) For the purposes of subsection (1), the County Council has the powers conferred by any general or special Act upon



the local municipalities and local boards thereof for the receiving, dumping and disposing of waste.

(3) The County Council may, for each local municipality, designate one or more facilities for the receiving, dumping and disposing of waste or any class thereof. Designated facilities

(4) If a designation has been made, a local municipality shall not utilize any facilities except the facilities that have been designated for that local municipality. Idem

**50.**—(1) No facilities for the receiving, dumping and disposing of waste shall be provided in the County by any municipality or other person without the consent of the County Council, which consent may be given upon such terms, including the payment of compensation, as may be agreed upon. Waste disposal, County responsibility

(2) Subsection (1) does not apply to prevent any person or any municipality which does not form part of the County for municipal purposes from providing facilities for the receiving, dumping and disposing of waste if such facilities were being lawfully provided on the 1st day of January, 1991, so long as that facility continues to operate without interruption. Existing facilities

(3) If the County Council refuses its consent under subsection (1) or the applicant and the County Council fail to agree on the terms related to the consent, the applicant may appeal to the Municipal Board which shall hear and determine the matter and may impose such conditions as the Board considers appropriate. Disagreements to O.M.B.

(4) The decision of the Municipal Board is final. Decision final

(5) Section 94 of the *Ontario Municipal Board Act* does not apply to a decision made under subsection (3). R.S.O. 1980, c. 347, s. 94 does not apply

**51.** The County Council may enter into agreements with any municipality or other person for establishing, constructing, operating or managing, at their joint expense and for their joint benefit, facilities for the receiving, dumping and disposing of waste. Agreements

**52.** Section 42, subsection 43 (1), section 44 and clause 47 (1) (b) apply with necessary modifications to the powers granted to the County under this Part to provide facilities for receiving, dumping and disposing of waste. Adoption of certain provisions

**53.** If a dispute arises in respect of the financial adjustments or the vesting of assets and liabilities, or the transfer of Disputes

agreements under this Part, the board of arbitrators established under section 80 has the power to hear and determine the matter.

## PART IX

### COUNTY ROAD SYSTEM

County roads

**54.** On and after the 1st day of January, 1991, all roads under the jurisdiction and control of the County shall continue to form part of the county road system together with,

- (a) the roads that on the 31st day of December, 1990 are under the jurisdiction and control of the Sarnia Suburban Roads Commission;
- (b) the roads within the City prescribed by the Minister; and
- (c) the roads that on the 31st day of December, 1990 are covered by an agreement under section 58 of the *Public Transportation and Highway Improvement Act*.

R.S.O. 1980,  
c. 421

Dissolution  
of roads  
commission

**55.**—(1) The Sarnia Suburban Roads Commission is dissolved on the 1st day of January, 1991 and the assets and liabilities of the commission are transferred to the County on that date.

Transfer of  
benefits,  
liabilities

(2) The County has, in respect of the roads included in the county road system, all the rights, powers and benefits conferred and is subject to all liabilities imposed by statute, by-law, contract or otherwise upon the Sarnia Suburban Roads Commission.

Assumption  
of highways  
by County  
R.S.O. 1980,  
c. 302

**56.**—(1) Despite subsections 270 (1), (2) and (4) of the *Municipal Act*, the County Council may by by-law assume as a county road any highway within a local municipality.

Consent  
required

(2) A by-law passed under subsection (1) does not take effect until assented to by the council of the local municipality.

Connecting  
roads

(3) The County Council may by by-law assume as a county road any highway in a local municipality that connects with a county road.

R.S.O. 1980,  
c. 421, ss.  
58, 59 do  
not apply

**57.**—(1) Sections 58 and 59 of the *Public Transportation and Highway Improvement Act* do not apply to the County or the local municipalities.

(2) All existing agreements between the County and a local municipality under section 58 of the *Public Transportation and Highway Improvement Act* are terminated on the 1st day of January, 1991.

Existing  
agreements

**58.**—(1) Despite subsections 278 (1) and (2) of the *Municipal Act*, a bridge that, on the 31st day of December, 1990, is under the exclusive or joint jurisdiction and control of County Council is on the 1st day of January, 1991 transferred to and vested in the council of the local municipality that has jurisdiction over the highway on which the bridge is situate.

Bridges

R.S.O. 1980,  
c. 302

(2) Subsection (1) does not apply to bridges,

Limitation

(a) on county roads;

(b) on a boundary line between local municipalities; or

(c) on a county boundary line.

**59.** The Minister may by order prescribe the roads within the City which are county roads.

Minister's  
order

## PART X

### HEALTH AND SOCIAL SERVICES

**60.**—(1) On and after the 1st day of January, 1991, the Lambton Health Unit shall be composed of,

Lambton  
Health Unit

(a) not more than six members appointed from and by the County Council; and

(b) not more than two persons appointed by the Lieutenant Governor in Council upon the recommendation of the Minister of Health.

(2) Despite any other Act, the expenses incurred by the Lambton Health Unit in establishing and maintaining the health unit and performing its functions under the *Health Protection and Promotion Act, 1983* or any other Act shall be paid by the County.

County  
responsible  
for expenses  
1983, c. 10

**61.** For the purposes of the *General Welfare Assistance Act*, no local municipality shall be deemed to be a municipality and the County shall have sole responsibility as a County for all matters provided for in that Act.

County  
responsible  
under  
R.S.O. 1980,  
c. 188

**62.**—(1) The homes for the aged known as Twilight Haven, North Lambton and Marshall Gowland, and all assets

Homes for  
the aged

and liabilities thereof, vest solely in the County on and after the 1st day of January, 1991.

No local municipality has authority under R.S.O. 1980, c. 203

(2) No local municipality has authority to establish, erect or maintain a home for the aged under the *Homes for the Aged and Rest Homes Act*.

Costs

(3) The costs of operating and maintaining Twilight Haven, North Lambton and Marshall Gowland shall form part of the levy under section 164 of the *Municipal Act*.

R.S.O. 1980, c. 302

1984, c. 55 does not apply to local municipality

**63.** No local municipality shall be deemed to be a municipality for the purposes of the *Child and Family Services Act, 1984*.

Information to be provided to County

**64.** Every local municipality and every officer or employee thereof shall, at the request of the officers of the County who are responsible for the administration of the Acts referred to in this Part, furnish to the County officers any information they may require for the purposes of this Act.

## PART XI

### PUBLIC LIBRARIES

County library board

**65.—(1)** A county library board for the entire County to be known as “The Lambton County Library Board” is hereby established on the 1st day of January, 1991 and shall be deemed to be a county library board established under Part I of the *Public Libraries Act, 1984*.

1984, c. 57

Composition of board

(2) Subsection 9 (5) of the *Public Libraries Act, 1984* applies to the county library board.

Transfer of assets, liabilities to county library board

(3) All library boards of the County, local municipalities and former municipalities are dissolved on the 1st day of January, 1991 and their assets and liabilities are transferred to the county library board established under subsection (1), without compensation.

Continuation of by-laws, etc.

(4) All by-laws, rules, regulations and fees passed or established by the boards dissolved under subsection (3) are continued as by-laws, rules, regulations and fees of the county library board and shall remain in force until the earlier of,

(a) the date they are amended or repealed by the board; or

(b) the 31st day of December, 1992.



(5) Nothing in this section repeals or authorizes the amendment or repeal of by-laws conferring rights, privileges, franchises, immunities or exemptions that could not have been lawfully repealed by a board dissolved under subsection (3).

Certain  
by-laws  
continued

**66.** The County shall pay to each local municipality, on or before the due date, all amounts of principal and interest becoming due upon any outstanding debt of each local municipality in respect of public libraries and, if the County fails to pay the amounts before the due date, the local municipality may charge the County interest at the annual rate of 15 per cent, or such lower rate as the local municipality determines, from the due date until payment is made.

Debt  
transferred to  
County

**67.** Every person who was an employee of a board dissolved under this Part on the 1st day of July, 1990, and continues to be employed until the 31st day of December, 1990, becomes, on the 1st day of January, 1991, an employee of the county library board.

Transfer of  
employees

## PART XII

### FINANCES

**68.** In this Part,

Definitions

“average municipal commercial mill rate” means, in respect of a local municipality, the rate obtained by dividing the total of taxes levied for all purposes, other than for school purposes and other than under sections 32 and 33 of the *Assessment Act*, on the commercial assessment for the preceding year by the total commercial assessment for the preceding year and multiplying the result by 1,000;

R.S.O. 1980,  
c. 31

“commercial assessment” means commercial assessment as defined in clause 1 (1) (b) of the *Ontario Unconditional Grants Act*;

R.S.O. 1980,  
c. 359

“discounted assessment” means, for a local municipality or for a merged area, the sum of,

- (a) the product obtained by multiplying the residential and farm assessment for that local municipality or that merged area by 0.5131, and
- (b) the commercial assessment for that local municipality or that merged area;

“discounted equalized assessment” means, for each local municipality, the sum of the discounted assessment and the



equivalent assessment of that local municipality divided by its prescribed equalization factor and multiplied by 100;

“discounted equalized assessment for each merged area” means the discounted assessment of the merged area divided by its prescribed equalization factor and multiplied by 100;

R.S.O. 1980,  
c. 302

“equivalent assessment” means, for a local municipality, that portion of its payments in lieu of taxes in the preceding year, as defined in clause 365 (1) (j) of the *Municipal Act*, not allocated for school purposes, divided by the average municipal commercial mill rate and multiplying the result by 1,000;

“merged area” means the area of the City of Sarnia or the area of the Town of Clearwater;

“net county levy” means the amount required for County purposes under subsection 365 (6) of the *Municipal Act* including the sums required for any board, commission or other body, apportioned to each local municipality by the County;

“net lower tier levy” means the amount required for the purposes of a local municipality under section 164 of the *Municipal Act* including the sums required for any board, commission or other body, but excluding amounts required to be raised for County and school purposes or for a special rate imposed under section 79;

R.S.O. 1980,  
c. 359

“residential and farm assessment” means residential and farm assessment as defined in clause 7 (1) (e) of the *Ontario Unconditional Grants Act*.

Prescribed  
equalization  
factor

**69.—**(1) For purposes of apportioning the net county levy or the net lower tier levy among the respective merged areas, the Minister may, in each year, prescribe the equalization factor to apply for that year to each local municipality within the County and each merged area.

Annual  
County  
apportionment

(2) Despite subsection 365 (6) of the *Municipal Act*, the treasurer of the County shall determine,

- (a) the discounted equalized assessment of each local municipality in the County;
- (b) the discounted equalized assessment of the County; and

- (c) the percentage share of apportionment, correct to three decimal places, for each local municipality by dividing the discounted equalized assessment for each local municipality by the discounted equalized assessment of the County and multiplying the result by 100.

**70.**—(1) In each year, the Ministry of Municipal Affairs shall calculate and notify the City of the discounted equalized assessment for each merged area.

Annual merged area apportionment

(2) Despite subsection 7 (2) of the *Ontario Unconditional Grants Act*, the net county levy and the net lower tier levy of the City shall be levied against the whole rateable property, including business assessment thereon, of the City and apportioned between the merged areas of the City in the proportion that the discounted equalized assessment for each merged area bears to the total discounted equalized assessment of both merged areas.

How levies apportioned  
R.S.O. 1980,  
c. 359

(3) The rates to be levied in each merged area of the City shall be determined in accordance with subsection 7 (3) of the *Ontario Unconditional Grants Act*.

Determination of rates

**71.**—(1) Despite section 70, the council of the City may by by-law in any year, before the adoption of the estimates for that year, levy in each of the merged areas, on the whole of the assessment for real property, including business assessment in the merged area, according to the last returned assessment roll, a sum not exceeding 50 per cent of that which would be produced by applying to such assessment the total rate for all purposes levied in the merged area in the preceding year on residential real property of public school supporters.

Interim levy

(2) The amount of any levy under subsection (1) shall be deducted from the amount of the levy made under subsection 70 (2).

Adjustments

(3) Subsection 159 (5) of the *Municipal Act* applies to levies made under subsection (1).

Application of  
R.S.O. 1980,  
c. 302,  
s. 159 (5)

**72.**—(1) For the purposes of levying taxes under Part IV of the *Education Act*, the merged areas shall be deemed to be municipalities, and the council of the City shall be deemed to be the council of each merged area.

Merged areas under  
R.S.O. 1980,  
c. 129

(2) The Lieutenant Governor in Council may each year make regulations providing for the apportionment of the sums

Regulations

required by the Lambton County Board of Education and The Lambton County Roman Catholic Separate School Board with respect to any local municipality or merged area or parts thereof that are wholly or partly within their area of jurisdiction.

Where  
county-wide  
assessment  
R.S.O. 1980,  
c. 302

**73.** Sections 69, 70, 71 and 72 of this Part and sections 365, 366 and 368 of the *Municipal Act* cease to apply to the County and the local municipalities if the County has been subject to an assessment update under section 368b of the *Municipal Act*.

Direction of  
Minister of  
Revenue

**74.**—(1) Despite subsections 368b (3) and (3a) of the *Municipal Act*, in 1991, for the purposes of taxation in 1992, the Minister of Revenue shall make a direction under subsection 368b (2) of the *Municipal Act* for changes to be made to the assessment rolls of the local municipalities.

Grants

(2) If the Minister is of the opinion that taxes for school purposes in a local municipality may be unduly increased because of changes made to the assessment rolls of local municipalities as a result of a direction under subsection (1), the Minister may make a grant to the local municipality under such terms as the Minister considers necessary in the circumstances.

Grant to be  
used to  
reduce  
increases

(3) If, in any year, a local municipality receives a grant under subsection (2), the local municipality shall, in that year, use the grant to reduce the increases in the amounts the local municipality is required to levy for school purposes.

Certain  
by-laws not  
affected

(4) Nothing in this Part prevents or restricts a local municipality from passing by-laws under section 362 or 363 of the *Municipal Act*.

1991 City  
rates

**75.**—(1) In 1991, the council of the City shall, in the manner prescribed by the Minister, levy on the whole of the assessment for real property and business assessment according to the last returned assessment roll pertaining to the merged area of the Town of Clearwater rates of taxation for general purposes which shall not be increased over the 1990 rates by more than the lesser of,

- (a) 3.5 per cent of the rates of taxation for general purposes in the Town of Clearwater in 1990; and
- (b) the rate of inflation for the calendar year of 1990, as determined by the Consumer Price Index published by Statistics Canada.

(2) In 1992, the council of the City shall, in the manner prescribed by the Minister, levy on the whole of the assessment for real property and business assessment according to the last returned assessment roll pertaining to the merged area of the Town of Clearwater rates of taxation for general purposes which shall limit the aggregate levy for general purposes upon the merged area to the lesser of,

1992 City  
rates

- (a) 103.5 per cent of the dollar amount levied for general purposes in the merged area of the Town of Clearwater in 1991; and
- (b) 100 per cent plus the rate of inflation for the calendar year of 1991, as determined by the Consumer Price Index published by Statistics Canada, of the dollar amount levied for general purposes in the merged area of the Town of Clearwater in 1991.

(3) In 1993, the council of the City shall, in the manner prescribed by the Minister, levy on the whole of the assessment for real property and business assessment according to the last returned assessment roll pertaining to the merged area of the Town of Clearwater rates of taxation for general purposes which shall not be increased over the 1992 rates by more than the lesser of,

1993 City  
rates

- (a) 3.5 per cent of the rates of taxation for general purposes in the merged area of the Town of Clearwater in 1992; and
- (b) the rate of inflation for the calendar year of 1992, as determined by the Consumer Price Index published by Statistics Canada.

(4) In 1994, 1995, 1996, 1997, 1998, 1999 and 2000, the council of the City shall, in the manner prescribed by the Minister, levy on the whole of the assessment for real property and business assessment according to the last returned assessment roll pertaining to the merged area of the Town of Clearwater rates of taxation for general purposes which are different from the rates which would have been levied for such purposes but for this subsection.

Rates,  
subsequent  
years

(5) If the Minister has made an order under this section which results in a reduction in the taxes which would have otherwise been levied in any year, the amount of the reduction shall be charged to the general funds of the City in that year.

Where taxes  
reduced



Adjustments  
of grant total

**76.**—(1) The Minister may by order on such conditions as the Minister considers appropriate provide for payments to be made to the City so that in each of the years 1991, 1992 and 1993 the total of all grants received by the City under the *Ontario Unconditional Grants Act* pertaining to the merged area of the Town of Clearwater and payments under this subsection is not less than the total of all grants received by the Town of Clearwater under the *Ontario Unconditional Grants Act* in 1990.

R.S.O. 1980,  
c. 359

Minister's  
order

(2) The Minister may by order before the 1st day of January, 2000, on such conditions as the Minister considers appropriate, make grants or loans to the County and the local municipalities to achieve the purposes of this Act.

Appropri-  
ations

**77.** The money required for the purposes of this Act shall be paid out of the money appropriated therefor by the Legislature.

Adjustments  
of grants  
under  
R.S.O. 1980,  
c. 359

**78.**—(1) A grant under the *Ontario Unconditional Grants Act* to the County or a local municipality in any year in which an incorporation, a major boundary change or a major change in responsibility for the delivery of any service took place during that year shall be revised to reflect the incorporation, the boundary change or the change in the delivery of services.

Adjustment  
of grants by  
Minister

(2) If, in any year, there is an overpayment or underpayment of grants paid to the County or a local municipality as a result of a revision under subsection (1), the Minister shall adjust any grant paid to the County or a local municipality in the immediately following year by the amount of the overpayment or underpayment.

Definitions

**79.**—(1) In this section,

“urban service” means a service of the City not being provided generally throughout the City or not benefiting lands in the City equally, and includes any liability incurred by a former municipality with respect to such service;

“urban service area” means the area or rateable property, including the business assessment thereon, designated in a by-law under clause (2) (c) or in an order under clause (5) (c).

By-laws  
respecting  
urban  
services

(2) The council of the City may, with the approval of the Municipal Board, by by-law,

(a) identify an urban service;



- (b) define which costs of the City are related to that urban service;
- (c) designate upon what area or rateable property, including the business assessment thereon, of the City the related costs should be raised; and
- (d) levy a special rate on that area or rateable property, including the business assessment thereon, to raise the whole or part of the related costs.

(3) The rates to be levied within each urban service area shall be determined in accordance with subsection 7 (3) of the *Ontario Unconditional Grants Act*.

Determina-  
tion of  
rates  
R.S.O. 1980,  
c. 359

(4) The council of the City may establish, amend or dissolve any number of urban service areas designated under subsection (2).

Dissolution  
of urban  
service areas

(5) Before the 1st day of January, 1991, the Minister, upon the joint application of the councils of the City of Sarnia and the Town of Clearwater, may make an order to be effective no earlier than the 1st day of January, 1991, that,

Minister's  
order

- (a) identifies an urban service;
- (b) defines which costs of the City will relate to that urban service; and
- (c) designates upon what area or rateable property, including business assessment thereon, of the City the related costs shall be raised.

(6) Where an order under subsection (5) creating an urban service area is in force and has not been amended under subsection (7), the council of the City may pass a by-law under clause (2) (d) related to that urban service area without the approval of the Municipal Board.

Where  
O.M.B.  
approval not  
required

(7) The council of the City may, with the approval of the Municipal Board, by by-law amend or repeal an order under subsection (5).

Amendments  
or repeal of  
order by City

## PART XIII

### MISCELLANEOUS

**80.**—(1) The Minister shall appoint three persons as a board of arbitrators to make adjustments of assets and liabilities arising from any amalgamation, dissolution, other than

Board of  
arbitrators

the dissolution of a police village, and transfer of functions or services under Parts I, II, V, VIII, IX, X, XI and this Part.

Certain provisions of R.S.O. 1980, c. 25 apply (2) Sections 3 to 5, 7, 9 to 11 and 13 to 15 of the *Arbitrations Act* and the Schedule to that Act apply to an arbitration under this section.

Decisions of board binding (3) The decisions of the board of arbitrators are binding on the County, local municipalities and local boards and are not subject to appeal.

Hearing (4) The board of arbitrators shall hold a hearing with respect to any matter set out in subsection (1) that is in dispute.

County responsible for industrial sites R.S.O. 1980, c. 302 **81.**—(1) Paragraph 50 of section 210 of the *Municipal Act* applies with necessary modifications to the County and no local municipality shall exercise the powers set out in that paragraph except in respect of lands acquired or held by a local municipality on or before the 31st day of December, 1990.

Restrictions respecting publicity, regional economic development agreements R.S.O. 1980, c. 302 (2) Subject to subsection (3), no local municipality shall exercise any powers under paragraphs 22 and 58 of section 208 of the *Municipal Act* after the 31st day of December, 1990.

Expenditures for publicity (3) The County and a local municipality may pool their funds and act jointly for the purposes of paragraph 22 of section 208 of the *Municipal Act*.

By-laws respecting emergency measures **82.**—(1) When County Council has passed a by-law under subclauses 209 (b) (ii) and (iii) of the *Municipal Act*, any by-law passed by the council of a local municipality under those subclauses is of no effect.

Idem (2) When a by-law passed by County Council under subclause 209 (b) (ii) of the *Municipal Act* is in force, the County may pass by-laws,

(a) with the consent of the local municipality or local board concerned, for appointing heads of departments and alternates to be members of or advisors to the emergency measures planning committee or any subcommittee thereof;

(b) with the consent of the local municipality or local board concerned, for training employees of the

local municipality or local board in their emergency functions;

- (c) for appointing members of the emergency measures planning committee or of any subcommittee thereof to be in charge of the departments or utilities throughout the County, as provided in the by-law, when an emergency occurs;
- (d) for acquiring alternative headquarters for the County Government outside the County; and
- (e) for obtaining and distributing emergency materials, equipment and supplies.

(3) The County shall be deemed to be a regional municipality and the local municipalities shall be deemed to be area municipalities of that regional municipality for the purposes of the *Emergency Plans Act, 1983*.

Deeming provision respecting 1983, c. 30

**83.** The County Council, before the 31st day of December, 1992, shall prepare, adopt and forward to the Minister for approval an amendment to the official plan of the County to cover the area of the former municipality of The Corporation of the City of Sarnia.

Amendment to official plan

**84.**—(1) The County Council shall not request an amendment to this Act unless,

Double majority vote

- (a) a majority of all the votes on County Council are cast in favour of the request; and
- (b) members of County Council representing a majority of the local municipalities cast their votes in favour of the request.

(2) For the purposes of clause (1) (b), subsection 41 (4) applies with necessary modifications.

Idem

**85.**—(1) The Lieutenant Governor in Council may, upon the recommendation of the Minister, make regulations providing for the security of employment, the protection of benefits, including seniority and pensions, and early retirement options for employees affected by this Act.

Regulations respecting employees

(2) Subsection (1) does not apply to employees affected by a by-law passed or repealed under Part VII.

Limitation

**86.** Sections 4 and 18 of this Act are repealed on the 1st day of December, 1991.

Repeal of ss. 4 and 18

## Repeals

**87.** *The City of Sarnia Act, 1925*, being chapter 103, *The City of Sarnia Act, 1977*, being chapter 101 and the *County of Lambton Act, 1981*, being chapter 92, are repealed on the 1st day of January, 1991.

Commence-  
ment

**88.**—(1) This Act, except sections 5, 6, 7, 13, 19, 20 and 21, Parts IX and X and section 87, comes into force on the day it receives Royal Assent.

## Idem

(2) Sections 5 and 13, Parts IX and X and section 87 come into force on the 1st day of January, 1991.

## Idem

(3) Sections 6, 7, 19, 20 and 21 come into force on the 1st day of December, 1991.

Transition,  
regular  
elections  
R.S.O. 1980,  
c. 308

(4) Despite subsection (3), the regular elections to be held in 1991 under the *Municipal Elections Act* in the area municipalities shall be conducted as if sections 6, 7 and 19 were in force.

## Short title

**89.** The short title of this Act is the *Sarnia-Lambton Act, 1989*.

## SCHEDULE

## WARD 1

Beginning at the intersection of the southerly boundary of the Town of Clearwater and the centre line of the Blackwell Sideroad;

Thence northerly along the centre line of the Blackwell Sideroad and the northerly prolongation thereof to a point distant 500 metres measured northerly from the southerly high water mark of Lake Huron;

Thence easterly and parallel with the southerly high water mark of the said Lake to the easterly boundary of the Town of Clearwater;

Thence southerly along the easterly boundary of the said Town to the south easterly angle of the said Town;

Thence westerly along the southerly boundary of the said Town to the place of beginning.

## WARD 2

Beginning at the intersection of the centre line of the King's Highway No. 402 and the centre line of the Blackwell Sideroad;

Thence northerly along the centre line of Blackwell Sideroad and the northerly prolongation thereof to a point distant 500 metres measured northerly from the southerly high water mark of Lake Huron;

Thence westerly and parallel with the southerly high water mark of the said Lake to the International Boundary between the Province of Ontario and the United States of America;



Thence southerly along the said International Boundary to the northerly boundary of the Village of Point Edward;

Thence easterly and southerly along the northerly and easterly boundaries of the said Village to the centre line of Michigan Avenue;

Thence easterly along the centre line of Michigan Avenue to the centre line of Indian Road North;

Thence southerly along the centre line of Indian Road North to the centre line of the King's Highway No. 402;

Thence easterly along the centre line of the said King's Highway to the place of beginning.

### WARD 3

Beginning at the intersection of the westerly boundary of the City of Sarnia and the centre line of Michigan Avenue;

Thence easterly along the centre line of Michigan Avenue to the centre line of Indian Road North;

Thence southerly along the centre line of Indian Road North to the centre line of the King's Highway No. 402;

Thence easterly along the centre line of the said King's Highway to the centre line of the Blackwell Sideroad;

Thence southerly along the centre line of the Blackwell Sideroad to the northerly limit of Concession V of the former Township of Sarnia;

Thence westerly along the northerly limit of the said Concession to the easterly limit of the King's Highway No. 40;

Thence westerly to and along the centre line of Wellington Street to the centre line of Indian Road South;

Thence northerly along the centre line of Indian Road South to the centre line of London Road;

Thence westerly along the centre line of London Road and the westerly prolongation thereof to the International Boundary between the Province of Ontario and the United States of America;

Thence northerly along the said International Boundary to the southerly boundary of the Village of Point Edward;

Thence easterly and northerly following the boundaries between the Village of Point Edward and the City of Sarnia to the place of beginning.

### WARD 4

Beginning at the intersection of the southerly boundary of the Town of Clearwater and the centre line of the Blackwell Sideroad;

Thence northerly along the centre line of the Blackwell Sideroad to the northerly limit of Concession V of the former Township of Sarnia;

Thence westerly along the northerly limit of the said Concession to the easterly limit of the King's Highway No. 40;



Thence westerly to and along the centre line of Wellington Street to the centre line of Indian Road South;

Thence northerly along the centre line of Indian Road South to the centre line of London Road;

Thence westerly along the centre line of London Road and the westerly prolongation thereof to the International Boundary between the Province of Ontario and the United States of America;

Thence southerly along the said International Boundary to the southerly boundary of the City of Sarnia;

Thence easterly along the southerly boundary of the City of Sarnia and the Town of Clearwater to the place of beginning.





# Bill 35

**An Act respecting the  
amalgamation of the City of Sarnia and the  
Town of Clearwater and the addition of the  
amalgamated City to the County of Lambton**

The Hon. J. Eakins  
*Minister of Municipal Affairs*



*1st Reading*      June 20th, 1989

*2nd Reading*      July 12th, 1989

*3rd Reading*

*Royal Assent*

*(Reprinted as amended by the Committee of the Whole House)*

## EXPLANATORY NOTES

The purpose of the Bill is to amalgamate the City of Sarnia with the Town of Clearwater on the 1st day of January, 1991 and to make the amalgamated City part of the County for municipal purposes.

The council of the amalgamated City shall consist of eight members, elected on a ward basis, four of whom shall also sit on County Council. The council of the County shall consist of the mayor of each local municipality and the four members elected by ward from the City. The distribution of votes on County Council is set out in subsection 18 (2).

Under Part VII certain powers that are usually conferred on local municipalities may, if prescribed by the Minister, be assumed by the County. The County is also responsible for waste management, county roads and certain other roads described in section 54, health and social services and public libraries.

A board of arbitrators is appointed under section 80 to deal with disputes in respect of any adjustments of assets and liabilities that result from the amalgamation and transfer of responsibilities.



# Bill 35

1989

## An Act respecting the amalgamation of the City of Sarnia and the Town of Clearwater and the addition of the amalgamated City to the County of Lambton

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HER MAJESTY, by and with the advice and consent of the Legislative Assembly of the Province of Ontario, enacts as follows:

## Definitions

**1. In this Act,**

“City” means The Corporation of the City of Sarnia-Clearwater as created by the amalgamation of the former municipalities under section 2;

“City of Sarnia” means the former municipality of The Corporation of the City of Sarnia;

“County” means The Corporation of the County of Lambton;

“County Council” means the council of the County;

“former municipalities” means The Corporation of the City of Sarnia and The Corporation of the Town of Clearwater as they existed before the 1st day of January, 1991;

“local municipality” means a city, town, village and township forming part of the County for municipal purposes but does not include a former municipality;

“Minister” means the Minister of Municipal Affairs;

“Municipal Board” means the Ontario Municipal Board;

“municipality” means a municipality, as defined in the *Municipal Affairs Act*, and a metropolitan, regional or district municipality and the County of Oxford or a local board of a metropolitan, regional or district municipality or of the County of Oxford; R.S.O. 1980,  
c. 303

“pre-election period” means the period from the 1st day of January, 1991 until the 30th day of November, 1991, inclusive;

“prescribed” means prescribed by regulations made under this Act;

“Town of Clearwater” means the former municipality of The Corporation of the Town of Clearwater.

## PART I

### LOCAL MUNICIPALITIES

**2.—(1)** On the 1st day of January, 1991, The Corporation of the City of Sarnia and The Corporation of the Town of Clearwater are amalgamated under the name of “The Corporation of the City of Sarnia-Clearwater”. Amalgamation

**(2)** Despite section 5 of the *Territorial Division Act*, the City forms part of the County for municipal purposes. City forms  
part of  
County  
R.S.O. 1980,  
c. 497

**(3)** The City shall not apply for the annexation or amalgamation of any land before the 1st day of January, 2016, unless the County Council and the council of every local municipality the lands of which are part of the proposed annexation or Future  
amalgamation,  
annexation  
by agreement

amalgamation agree, by resolution, to the proposed application being made.

Name of City  
to be put to  
a vote

**3.—**(1) The City shall submit the question “Do you want the new City to be named Sarnia” to the electors of the City at the 1991 regular election.

Change of  
name

(2) If the majority of votes cast in response to the question are in the affirmative, the name of the City shall become The Corporation of the City of Sarnia effective the 1st day of January, 1992.

Idem

(3) After the 1st day of January, 1992, the Minister may by order alter the name of the City.

Composition  
of interim  
City council  
R.S.O. 1980,  
c. 302

**4.—**(1) Despite subsection 30 (1) of the *Municipal Act*, during the pre-election period, the council of the City shall be composed of,

- (a) a mayor, who shall be the person who was the mayor of the City of Sarnia on the 31st day of December, 1990;
- (b) a deputy mayor, who shall be the person who was the mayor of the Town of Clearwater on the 31st day of December, 1990;
- (c) a reeve, who shall be the person who was the reeve of the Town of Clearwater on the 31st day of December, 1990;
- (d) a deputy reeve, who shall be the person who was the deputy reeve of the Town of Clearwater on the 31st day of December, 1990; and
- (e) twelve other members,
  - (i) eight of whom shall be the persons who were the members of the council, except the mayor, of the City of Sarnia on the 31st day of December, 1990, and
  - (ii) four of whom shall be the persons who were the members of the council, except the mayor, reeve and deputy reeve, of the Town of Clearwater on the 31st day of December, 1990.

First meeting

(2) The first meeting of the council shall be held not later than the 8th day of January, 1991.

(3) Each member of council has one vote.

One vote

(4) Despite section 72 of the *Municipal Act*, if the mayor of the City is absent from the municipality or is unable or unwilling to act or the office of mayor is vacant, the deputy mayor shall act in the place of the mayor and, while so acting, has all the rights and powers of the mayor.

Acting mayor  
R.S.O. 1980,  
c. 302

**5.**—(1) The City shall consist of four wards as described in the Schedule.

Wards

(2) All wards in the former municipalities are dissolved.

Dissolution  
of former  
wards

**6.**—(1) Despite sections 30, 31, 32, 34 and 36 of the *Municipal Act*, but subject to section 7, the council of each local municipality shall be composed of a mayor, who shall be elected by a general vote of the electors of the local municipality and who shall be the head of the council, and the following other members:

Composition  
of councils

1. The City—eight members consisting of,

- i. four members who shall be elected by wards, one from each ward, as members of the council of the City and of the County Council, and
- ii. four members who shall be elected by wards, one from each ward, as members of the council of the City.

2. A town—six members who shall be elected by a general vote of the electors of the town.

3. A township—four members who shall be elected by a general vote of the electors of the township.

4. A village—four members who shall be elected by a general vote of the electors of the village.

(2) Each member of the council of a local municipality has one vote.

One vote

(3) Despite section 37 of the *Municipal Act*, a person is qualified to be elected or hold office under paragraph 1 of subsection (1) if, in addition to being qualified under section 37 of the *Municipal Act*, that person at any time during the period commencing on the Tuesday following the first Monday in September in an election year and ending on the Monday in October that precedes polling day by twenty-eight

Qualifi-  
cations to  
hold office



days is a resident in or is the owner or tenant of land in or is the spouse of such an owner or tenant in the ward in which that person is seeking to be elected or to hold office. ▲

O.M.B.  
order  
R.S.O. 1980,  
c. 302

**7.—(1)** Upon the application of a local municipality under subsection 13 (2) of the *Municipal Act*, or upon the petition of electors under subsection 13 (3) of that Act, the Municipal Board may, by order,

- (a) divide or redivide the local municipality into wards and designate the name or number each ward shall bear and declare the date when the division or redivision takes effect;
- (b) alter or dissolve any or all of the wards in the local municipality and declare the date when the alteration or dissolution takes effect; and
- (c) vary the composition of the council of the local municipality.

Limitation on  
order

(2) No order made under subsection (1),

- (a) shall take effect before the 1st day of December, 1994; or
- (b) shall alter the total number of members who represent the local municipality on the County Council or the number of votes assigned to the members under this Act.

Idem

(3) Despite subsection (1), the mayor of the local municipality shall continue to be elected by a general vote of the electors of the local municipality and shall be the head of council of the local municipality and a member of the County Council.

Where  
inquiry by  
Minister

(4) Where the Minister is inquiring into the structure, organization and methods of operation of a local municipality or the County, the Minister may give notice to the Municipal Board of the inquiry and request that any application or petition made under subsection (1) be deferred until the inquiry has been completed.

Idem

(5) If notice is given under subsection (4), all proceedings in the application or petition are stayed until the Minister gives notice to the Municipal Board that they may be continued.

No board of  
control

(6) A local municipality shall not have a board of control.

**8.**—(1) Every by-law and resolution of a former municipality shall be deemed to be a by-law or resolution of the City and shall remain in force in the area of the former municipality until the earlier of,

By-laws,  
resolutions of  
former  
municipalities

(a) the date it is amended or repealed by the council of the City; or

(b) the 31st day of December, 1992.

(2) Despite subsection (1), any by-law of a former municipality passed under section 34 of the *Planning Act, 1983*, or a predecessor of that section, and any official plan of a former municipality approved under the *Planning Act, 1983*, or a predecessor of that Act, shall remain in force until amended or repealed.

By-laws,  
official plans  
under  
1983, c. 1

(3) If a former municipality has commenced procedures to enact a by-law that requires the approval of a minister of the Crown, the Municipal Board or a provincial agency and the approval has not been obtained before the 31st day of December, 1990, the council of the City may continue the procedures to enact the by-law and subsection (1) applies with necessary modifications to the by-law.

By-laws that  
require  
approval

(4) Nothing in this section repeals or authorizes the amendment or repeal of,

By-laws,  
resolutions  
not affected

(a) by-laws or resolutions of the former municipalities passed under section 45, 58 or 61 of the *Drainage Act* or a predecessor of those sections; and

R.S.O. 1980,  
c. 126

(b) by-laws or resolutions conferring rights, privileges, franchises, immunities or exemptions that could not have been lawfully repealed by the councils of the former municipalities.

**9.** Except as otherwise provided in this Act, the assets and liabilities of the former municipalities and their local boards become assets and liabilities of the City or a local board thereof without compensation, and the City and its local boards stand in the place of the former municipalities and their local boards.

Assets and  
liabilities  
transferred to  
City

**10.** All taxes, charges or rates levied by a former municipality under any general or special Act that are due and unpaid on the 31st day of December, 1990 shall, after that date, be taxes, charges or rates due and payable to the City and may be collected and recovered by the City as if the taxes, charges or rates had been imposed by the City.

Taxes,  
charges, rates  
transferred to  
City

Dissolution  
of  
committees  
of adjustment

**11.**—(1) Subject to subsection (4), on the 1st day of January, 1991, the committees of adjustment of the former municipalities are dissolved.

City to  
establish  
committee of  
adjustment

(2) The City shall establish a committee of adjustment under section 43 of the *Planning Act, 1983*.

Applications  
continued

(3) All applications to the committees of adjustment of the former municipalities shall be deemed to be applications to and shall be continued by the committee of adjustment of the City.

Continuing  
matters

(4) The committees of adjustment dissolved under subsection (1) and the terms of office of the members of the committees shall continue to the 31st day of January, 1991 for the purpose of making a decision on any application for which a hearing is completed before the 1st day of January, 1991.

Dissolution  
of  
committees,  
boards under  
1982, c. 7,  
R.S.O. 1980,  
cc. 80, 417

**12.**—(1) The council of the City shall be deemed to be a recreation committee under the *Ministry of Tourism and Recreation Act, 1982*, a committee of management of a community recreation centre under the *Community Recreation Centres Act* and a board of park management under the *Public Parks Act* and all such committees and boards of the former municipalities are dissolved on the 1st day of January, 1991.

Idem

(2) All by-laws and resolutions of the boards and committees dissolved under subsection (1) are continued as by-laws and resolutions of the City, and shall remain in force until the earlier of,

(a) the date they are amended or repealed by the City; or

(b) the 31st day of December, 1992.

Certain  
by-laws,  
resolutions  
continue

(3) Nothing in this section repeals or authorizes the amendment or repeal of by-laws or resolutions conferring rights, privileges, franchises, immunities or exemptions that could not have been lawfully repealed by the boards and committees dissolved under subsection (1).

Repeal of  
certain  
by-laws,  
resolutions,  
appointments

**13.**—(1) Despite section 8,

(a) the by-laws and resolutions of the City of Sarnia establishing and appointing members to the Canada Day Committee, Committee of Parks and Recreation, Committee of Management of Marshall Gowland Manor, Planning Advisory Committee,

Sarnia Heritage Committee and the Sarnia Museum Board, all of the City of Sarnia, are repealed;

- (b) the by-laws and resolutions of the Town of Clearwater establishing and appointing members to the Planning Advisory Committee of the Town of Clearwater are repealed; and
- (c) the terms of office of the appointees of the City of Sarnia to the Property Standards Committee of the City of Sarnia are terminated.

(2) Nothing in this section prevents the City from or relieves the City of any responsibility for establishing or making appointments to boards and committees. Appointments

**14.**—(1) Despite section 8, the City, on or before the 31st day of January, 1991, shall, Fire departments

- (a) repeal the by-laws of the City of Sarnia and the Town of Clearwater establishing their respective fire departments; and
- (b) establish a fire department for the City.

(2) Every person who is a member of the fire department of the City of Sarnia or the Town of Clearwater on the 1st day of July, 1990 and continues to be a member until the 31st day of December, 1990 becomes a member of the fire department established under clause (1) (b). Fire fighters

(3) In subsection (2), “member” means a full-time fire fighter and a volunteer fire fighter as defined in the *Fire Departments Act*. Definition  
R.S.O. 1980,  
c. 164

**15.** Except as otherwise provided in this Act, the City or a local board thereof shall offer to employ every person who was employed by a former municipality or a local board thereof on the 1st day of July, 1990 and who continued to be so employed until the 31st day of December, 1990. Offer of employment

**16.**—(1) The Police Village of Inwood and the Police Village of Florence are dissolved on the 1st day of January, 1991. Dissolution of police villages

(2) The Municipal Board, upon the application of a local municipality or a local board thereof or of its own motion, may exercise the powers under section 25 of the *Municipal Act* consequent upon the dissolutions. Further powers  
R.S.O. 1980,  
c. 302



No further  
appeal  
R.S.O. 1980,  
c. 347

(3) Sections 94 and 95 of the *Ontario Municipal Board Act* do not apply to decisions or orders made in the exercise of the powers under subsection (2).

## PART II

### COUNTY COUNCIL

Application  
R.S.O. 1980,  
c. 302

**17.** This Part applies despite sections 27, 28 and 29 of the *Municipal Act*.

Interim  
County  
Council

**18.—(1)** During the pre-election period, the County Council shall have thirty-seven members consisting of,

- (a) the mayor, reeve and deputy reeve of the City;
- (b) the reeve of the Village of Alvinston, the Village of Arkona, the Village of Oil Springs and the Village of Thedford; and
- (c) the reeve and deputy reeve of the Town of Forest, the Town of Petrolia, the Village of Grand Bend, the Village of Point Edward, the Village of Watford, the Village of Wyoming, the Township of Bosanquet, the Township of Brooke, the Township of Dawn, the Township of Enniskillen, the Township of Euphemia, the Township of Moore, the Township of Plympton, the Township of Sombra and the Township of Warwick.

Distribution  
of votes

(2) The members of the County Council under subsection (1) shall have a total of seventy-three votes of which,

- (a) the mayor of the City shall have ten votes;
- (b) the reeve and deputy reeve of the City shall each have nine votes;
- (c) the reeve of the Township of Bosanquet and the Township of Moore shall each have three votes;
- (d) the reeve of the Town of Petrolia, the Township of Enniskillen, the Township of Plympton and the Township of Sombra shall each have two votes;
- (e) the deputy reeve of the Township of Bosanquet, the Township of Moore and the Township of Plympton shall each have two votes; and
- (f) all other members shall have one vote.



(3) The first meeting of the County Council shall be held after the council of the City has held its first meeting under subsection 4 (2) but, in any event, not later than the 15th day of January, 1991. First meeting

(4) Despite subsection 51 (1) of the *Municipal Act*, the County Council established under subsection (1) shall, at the first meeting at which a majority of the members is present, elect one of its members to be warden and, for such election, each member of County Council shall have one vote. Warden  
R.S.O. 1980,  
c. 302

(5) The term of the warden of the County holding office on the 30th day of November, 1990 is extended until a new warden is elected under subsection (4). Term of  
office

**19.**—(1) The County Council shall be composed of, Composition  
of County  
Council

(a) the mayor of each local municipality; and

(b) the four county ward members of the council of the City.


(2) The members of the County Council under subsection (1) shall have a total of thirty-seven votes of which, Distribution  
of votes

(a) the mayor and each county ward member of the council of the City shall have three votes;

(b) the mayor of the Township of Bosanquet, the Township of Moore and the Township of Plympton shall each have two votes; and


(c) all other members shall have one vote.

(3) The County Council shall review the distribution of votes under subsection (2) on or before the 1st day of January, 2001. Review

 (4) Despite subsection 18 (2) and subsection (2) of this section, upon the recommendation of the Minister, the Lieutenant Governor in Council may by order provide for the manner in which the County Council votes of the mayors of municipalities being amalgamated should be distributed to the local municipalities, other than the City, that would exist after such amalgamation. Distribution  
of votes of  
mayors

**20.**—(1) Despite subsections 19 (2), for the purposes of electing the warden of County Council, each member shall have one vote. Election of  
warden

County  
warden

(2) The warden of the County Council shall bear the title of county warden. 

Vacancies

**21.** The seat of a mayor of a local municipality and the seat of a county ward member of the council of the City becomes vacant if his or her seat on the County Council is declared vacant by the County Council.

Offer of  
employment

**22.** The County or a local board thereof shall offer to employ every person who, on the 1st day of July, 1990, was employed in any undertaking carried on by or on behalf of any former or local municipality or local board thereof that is assumed by the County or a local board thereof under this Act and who continues to be so employed until the 31st day of December, 1990.

By-laws,  
resolutions  
continued

**23.**—(1) Every by-law and resolution of a former or local municipality in respect of any undertaking carried on by or on behalf of a former or local municipality that is assumed by the County under this Act shall be deemed to be a by-law or resolution of the County and shall remain in force in the area of the former or local municipality until the earlier of,

- (a) the date it is amended or repealed by the council of the County; or
- (b) the 31st day of December, 1992.

By-laws that  
require  
approval

(2) If a former or local municipality has commenced procedures to enact a by-law that requires the approval of a minister of the Crown, the Municipal Board or a provincial agency and the approval has not been obtained before the 31st day of December, 1990, the council of the County may continue the procedures to enact the by-law and subsection (1) applies with necessary modifications to the by-law.

By-laws,  
resolutions  
not affected

(3) Nothing in this section repeals or authorizes the amendment or repeal of by-laws or resolutions conferring rights, privileges, franchises, immunities or exemptions that could not have been lawfully repealed by the councils of the former municipalities.

Assets and  
liabilities  
transferred to  
County

**24.** All assets and liabilities of a former or local municipality or a local board thereof in respect of any undertaking carried on by or on behalf of any former or local municipality or local board thereof that is assumed by the County or a local board thereof under this Act become assets and liabilities of the County or a local board thereof without compensation, and the County and its local boards stand in the place of the former or local municipalities and their local boards.

## PART III

## FORMER MUNICIPALITIES

**25.—**(1) The City of Sarnia and the Town of Clearwater Agreement shall enter into an agreement with respect to,

- (a) fee structures;
- (b) capital improvements;
- (c) the adequacy of public buildings;
- (d) maintenance of current levels of services;
- (e) shared capital expenditures;
- (f) impost fees;
- (g) capital improvements;
- (h) cash in lieu of parkland;
- (i) organizational structures;
- (j) the financing of capital expenditures;
- (k) capital budgets;
- (l) equipment reserve accounts;
- (m) contributions to reserve accounts;
- (n) shoreline protection;
- (o) public transit;
- (p) rural water supply;
- (q) water meters; and
- (r) major recreation complexes.

(2) The councils of the County, the City of Sarnia and the Town of Clearwater shall establish a joint implementation committee to make recommendations with respect to the agreement and any other matter set out in this Act. Joint committee

(3) The joint committee shall submit its recommendations to the Minister on or before the 1st day of May, 1990. Recommendations to be submitted to Minister

Order  
effecting  
recommen-  
dations

(4) Subject to any other Act, the Lieutenant Governor in Council may, upon the recommendation of the Minister, by order give effect to any recommendation of the joint committee.

## PART IV

### SARNIA HYDRO

Hydro  
commission

**26.—**(1) A hydro-electric power commission for the City is hereby established on the 1st day of January, 1991 and shall be deemed to be a commission established under Part III of the *Public Utilities Act* and a municipal commission within the meaning of the *Power Corporation Act*.

R.S.O. 1980,  
cc. 423, 384

Composition  
of  
commission

(2) Despite section 41 of the *Public Utilities Act*, the hydro-electric power commission shall,

- (a) during the pre-election period, be composed of,
  - (i) the members of the commission dissolved under subsection (5), and
  - (ii) the deputy mayor and reeve of the City; and
- (b) after the pre-election period, be composed of,
  - (i) the mayor of the City, and
  - (ii) four other members who are qualified electors in the City under the *Municipal Elections Act* who shall be elected by a general vote of the electors of the City.

R.S.O. 1980,  
c. 308

Term of  
office

(3) A member of the commission shall hold office for the same term as the members of council or until the successor of the member is elected or appointed.

Delegate of  
mayor

(4) The council of the City may by by-law, passed with the written consent of the mayor, appoint a delegate from among the members of the council to represent the mayor on the commission.

Dissolution

(5) The Hydro-Electric Commission of the City of Sarnia is dissolved on the 1st day of January, 1991.

Transfer of  
assets,  
liabilities

(6) On the 1st day of January, 1991, the assets of the Town of Clearwater, the assets under the control and management of the commission dissolved under subsection (5) and the liabilities of the Town of Clearwater and of such commission



that relate to the distribution and supply of electrical power become assets under the control and management of and liabilities of the commission established under subsection (1), without compensation.

(7) On the 1st day of January, 1991, the commission established under subsection (1) shall acquire the retail distribution facilities within the Town of Clearwater used by Ontario Hydro on the 31st day of December, 1990 in the retail distribution of power, including equipment leased by Ontario Hydro to retail customers within the Town of Clearwater for the use of such power, and the price of the facilities shall be equal to the original cost of the facilities less the sum of the accumulated net retail equity of the customers supplied with power through the facilities and the accumulated depreciation associated with the facilities.

Purchase of  
retail  
distribution  
facilities from  
Ontario  
Hydro

(8) In subsection (7),

Definitions

“accumulated net retail equity” means the portion of the equity accumulated through debt retirement appropriations recorded for the rural power district relating to Ontario Hydro’s rural retail system plus the portion of the balance recorded for rural retail customers in the Stabilization of Rates and Contingencies Account, in the books of Ontario Hydro;

“retail distribution facilities” means works for the transmission and supply of power at voltages less than 50 kilovolts other than works located within a transformer station that transforms power from voltages greater than 50 kilovolts to voltages less than 50 kilovolts.

(9) All by-laws and resolutions of the Town of Clearwater and of the commission dissolved under subsection (5) that relate to the distribution and supply of electrical power are continued as by-laws and resolutions of the commission established under subsection (1), and shall remain in force until the earlier of,

Continuation  
of by-laws,  
resolutions

(a) the date they are amended or repealed by the commission; or

(b) the 31st day of December, 1992.

(10) Nothing in this section repeals or authorizes the amendment or repeal of by-laws or resolutions conferring rights, privileges, franchises, immunities or exemptions that could not have been lawfully repealed by the Town of

Certain  
by-laws,  
resolutions  
remain  
effective



Clearwater or by the commission dissolved under subsection (5).

## PART V

### POLICE

Boards of  
Commissioners of  
Police

R.S.O. 1980,  
c. 381

Interim  
board

Composition  
of board

Temporary  
name

Police service

Idem

Local board

Rights  
protected

Transfer to  
City

**27.**—(1) On the 1st day of January, 1990, The Board of Commissioners of Police of the City of Sarnia and The Board of Commissioners of Police of the Town of Clearwater are amalgamated and the new board shall be deemed to be a board established under section 8 of the *Police Act*.

(2) Despite section 8 of the *Police Act*, from the 1st day of January, 1990 to the 30th day of November, 1991, inclusive, the board shall be composed of the members of the boards amalgamated under this section.

(3) On and after the 1st day of December, 1991, the board shall be composed of those members provided for under section 8 of the *Police Act*.

(4) During 1990, the board shall be called “The Board of Commissioners of Police of the City of Sarnia and the Town of Clearwater”.

(5) During 1990, the board is responsible for providing police service for the City of Sarnia and the Town of Clearwater and, for the purpose of exercising its powers under any general or special Act, the City of Sarnia and the Town of Clearwater shall be deemed to be amalgamated as a city municipality.

(6) On and after the 1st day of January, 1991, the board is responsible for providing police service for the City.

**28.**—(1) During 1990, the board shall be deemed to be a local board of the City of Sarnia and not of the Town of Clearwater.

(2) Despite subsection (1), a resident or elector of the Town of Clearwater has the same rights and privileges as a resident or elector of the City of Sarnia relating to police matters.

(3) On the 1st day of January, 1991, the board shall continue as the board of commissioners of police of the City and a local board of the City.

**29.**—(1) The board shall, in preparing its 1990 estimates under subsection 14 (2) of the *Police Act*, show separately the amount required to provide police service in the Town of Clearwater and in the City of Sarnia.

Estimates  
R.S.O. 1980,  
c. 381

(2) The amount of the estimates for providing police service in the Town of Clearwater shall be deemed to be a debt of the Town of Clearwater falling due in 1990 for the purposes of section 164 of the *Municipal Act*, and the Town of Clearwater shall pay this amount to the City of Sarnia no later than the 30th day of June, 1990.

Idem  
R.S.O. 1980,  
c. 302

(3) If there is a disagreement between the City of Sarnia and the Town of Clearwater on how the estimates are broken down under subsection (1), the City of Sarnia or the Town of Clearwater may refer the matter to the Ontario Police Commission and the decision of the Ontario Police Commission is final.

Disagree-  
ments

**30.** On the 1st day of January, 1990, the assets under the control and management of the boards amalgamated under subsection 27 (1) and all liabilities of such boards become assets under the control and management of and liabilities of the board, without compensation.

Transfer of  
assets,  
liabilities

**31.**—(1) On the 1st day of January, 1990, all by-laws and resolutions of the boards amalgamated under subsection 27 (1) are continued as by-laws and resolutions of the board and shall remain in force in the former municipality for which they were passed until the earlier of,

Continuation  
of by-laws,  
resolutions

(a) the date they are amended or repealed by the board; or

(b) the 31st day of December, 1990.

(2) Nothing in this section repeals or authorizes the amendment or repeal of by-laws or resolutions conferring rights, privileges, franchises, immunities or exemptions that could not have been lawfully repealed by the boards amalgamated under subsection 27 (1).

Certain  
by-laws,  
resolutions  
remain  
effective

**32.** On and after the 1st day of January, 1991, the board and the members of the police force of the City shall have the same duties with respect to by-laws of the County as they do with respect to by-laws of the City.

Responsi-  
bility for  
County  
enforcement

**33.** Every person who is a member of the police force of the Town of Clearwater or of the police force of the City of Sarnia on the 1st day of July, 1989, and who continues to be a

Transfer of  
police  
personnel

member until the 31st day of December, 1989, becomes on the 1st day of January, 1990 a member of the police force created by the amalgamation under subsection 27 (1).

## PART VI

### BOUNDARY ADJUSTMENTS

Application  
of  
1981, c. 70

**34.**—(1) This Part applies to applications made to the Minister under section 2 of the *Municipal Boundary Negotiations Act, 1981*, that are being processed on the day this Part comes into force, and to future applications made under that section before the 1st day of January, 1991, to resolve an intermunicipal boundary issue or an intermunicipal boundary-related issue in the County.

Idem

(2) Subsection (1) does not apply to an issue involving a boundary of the County unless, in the opinion of the Minister, that issue is of a minor nature.

1981, c. 70  
does not  
apply

(3) Except as otherwise provided in this Part, the *Municipal Boundary Negotiations Act, 1981* does not apply to an application to which this Part applies.

Exception

(4) Sections 15 to 21 of the *Municipal Boundary Negotiations Act, 1981* apply with necessary modifications to an application to which this Part applies and to an order made under section 40.

Boundary  
application  
committee

**35.**—(1) The warden of County Council shall, within thirty days of this Part coming into force, appoint a boundary application committee.

Composition  
of committee

(2) The committee shall have five members consisting of,

(a) the warden;

(b) two members of County Council representing towns or villages; and

(c) two members of County Council representing townships.

Presiding  
officer

(3) The members of the committee shall appoint a presiding officer.

Guidelines

**36.** The committee shall establish guidelines for considering boundary applications in consultation with the Ministry of Municipal Affairs.

**37.**—(1) For each application to which this Part applies, the committee shall, having regard for the guidelines established under section 36, Duties of committee

- (a) determine and inquire into the issues raised by the application;
- (b) determine the party municipalities which have a substantial interest in the issues raised; and
- (c) obtain the opinion of the party municipalities and of any local board that the committee considers is affected by the application, on the issues raised by the application.

(2) Subject to subsections (4) and (5), the committee shall Idem  
prepare and submit to County Council a report setting out,

- (a) the issues;
- (b) the party municipalities in respect of each issue;
- (c) the extent of agreement or disagreement on the issues;
- (d) any agreement the party municipalities have reached on any of the issues;
- (e) the recommendations of the committee on how the issues raised by the application should be resolved; and
- (f) any other matters the committee considers appropriate.

(3) The committee may make recommendations under Recommendations  
clause (2) (e) with respect to,

- (a) the matters set out in paragraphs 1 to 24 of section 14 of the *Municipal Boundary Negotiations Act*, 1981, c. 70  
1981;
- (b) the name of a local municipality; and
- (c) in the event the committee recommends an amalgamation, how the County Council votes of the mayors of the municipalities being amalgamated should be distributed to the local municipalities, other than the City, that would exist after such amalgamation.



Public  
meeting

(4) The committee shall, before preparing its report, hold at least one public meeting for the purpose of obtaining information, comments or opinions regarding the application.

Idem

(5) The committee shall, after preparing its report and before submitting it to County Council, hold at least one public meeting for the purpose of obtaining submissions and comments from the public in respect of the contents of the report.

Amendments  
to report

(6) The committee may amend its report after the public meeting required under subsection (5) and before submitting it to County Council.

Notice of  
meeting

(7) Notice of a public meeting required under subsection (4) or (5) shall be given at least fifteen days in advance of each meeting by publishing it in a newspaper having general circulation in the party municipalities.

County  
proposal

**38.**—(1) The County Council shall consider the report of the committee and shall, within sixty days after receiving the report and having regard to the guidelines established by the committee under section 36, submit to the Minister a proposal with respect to the resolution of the issues raised by the application.

Recommen-  
dations

(2) The proposal may contain recommendations with respect to the matters set out in subsection 37 (3).

Action by  
Minister

**39.** The Minister shall, within sixty days of receipt of the proposal,

- (a) submit to the Lieutenant Governor in Council a recommendation with respect to one or more of the matters set out in subsection 37 (3);
- (b) refer any issue back to County Council or the committee for further consideration;
- (c) terminate further consideration of the application;
- (d) refer any issue to the Municipal Board to hear any party municipality and, after a hearing, to make recommendations thereon; or
- (e) take such other action as the Minister considers appropriate.

Order

**40.** Upon receipt of the recommendation of the Minister, the Lieutenant Governor in Council may by order provide for one or more of the matters set out in subsection 37 (3).



## PART VII

## ASSUMPTION OF LOCAL POWERS BY THE COUNTY

**41.**—(1) In this Part, “local power” means a power that is conferred by any general or special Act on local municipalities or local boards thereof and that is prescribed by the Minister. Local power

(2) The County Council may pass by-laws to assume any local power for all of the local municipalities. Assumption of local power

(3) No by-law under subsection (2) shall be passed or repealed unless, Double majority vote

(a) a majority of all the votes on County Council are cast in its favour; and

(b) members of County Council representing a majority of the local municipalities cast their votes in its favour.

(4) For the purpose of clause (3) (b), the members of County Council representing the City shall only be considered to have cast their votes in favour of a by-law if at least three of the City representatives cast their votes in its favour. Idem

(5) When a by-law passed under subsection (2) comes into effect, Effect of by-law

(a) the County is responsible for the local powers assumed by the County in all of the local municipalities;

(b) the County has the powers conferred by any general or special Act upon the local municipalities or local boards thereof related to the local powers assumed by the County;

(c) no local municipality shall exercise the local powers assumed by the County and any by-law or other measure of a local municipality under that power is of no effect; and

(d) no local municipality shall provide any service or facility under the local power assumed by the County within the County without the consent of County Council, which consent may be given upon such conditions, including the payment of compensation, as may be agreed upon.

Appeal to  
O.M.B.

(6) If consent is refused under clause (5) (d) or the council of the local municipality and the County Council fail to agree on the conditions related to the consent, the applicant may appeal to the Municipal Board which shall hear and determine the matter.

Decision of  
Board final

(7) The Municipal Board may impose such conditions as it considers appropriate and the decision of the Municipal Board is final.

No further  
appeal  
R.S.O. 1980,  
c. 347

(8) Section 94 of the *Ontario Municipal Board Act* does not apply to a decision made under subsection (7).

Transfer of  
rights, obliga-  
tions, etc.

**42.**—(1) All rights, obligations, assets and liabilities of a local municipality or local board thereof pertaining to the local powers assumed by the County are vested in the County and financial adjustments, calculated in accordance with such criteria as may be prescribed, shall be made between the County and the local municipalities or local boards thereof.

Assumption  
by County of  
debt

(2) The County shall pay to the local municipality or local board thereof on or before the due date all amounts of principal and interest becoming due upon any outstanding debt of that local municipality or local board in respect of the local powers assumed by the County.

Interest

(3) If the County fails to make any payment required under subsection (2) on or before the due date, the local municipality or local board may charge the County interest at the rate of 15 per cent per annum, or such lower rate as the local municipality or local board determines, from the due date until payment is made.

Agreements

**43.**—(1) If a local municipality or local board thereof had entered into an agreement with any municipality or other person in respect of the local power assumed by the County, the County shall be bound by and entitled to the benefit of the agreement and the local municipality or local board thereof is relieved of all liability under the agreement.

Idem

(2) The County Council may enter into agreements with any municipality or other person for establishing, constructing, operating or managing any service or facility that is within the jurisdiction of the County Council as a result of the passage of the by-law under subsection 41 (2).

Rates  
R.S.O. 1980,  
c. 302

**44.**—(1) Despite sections 368 and 368e of the *Municipal Act*, the County Council may by by-law provide for imposing on and collecting from the local municipalities for which it is providing services or facilities under the assumed local powers

a rate sufficient to pay the whole, or such portion as the by-law may specify, of the expenditures and capital costs including debenture charges related to the services or facilities and such rate may vary on any basis the County Council considers appropriate and specifies in the by-law.

(2) All rates under subsection (1) constitute a debt of the local municipality to the County and are payable at such times and in such amounts as may be specified by by-law of the County Council. Idem

(3) Despite sections 368 and 368e of the *Municipal Act*, a local municipality may, Collection of rates  
R.S.O. 1980,  
c. 302

- (a) pay the whole or part of the amount chargeable to it under this section out of its general funds;
- (b) pass by-laws for collecting the whole or part of the amount chargeable to it under this section in the same manner as that local municipality could have collected the amount if the local power had not been assumed by the County; and
- (c) include the whole or any part of an amount chargeable to it under this section as part of the cost of an urban service within an urban service area established in the local municipality under any general or special Act.

**45.—**(1) When a by-law under subsection 41 (2) is repealed, Repeal of  
by-law

- (a) the local powers assumed by the County revert to the local municipalities and local boards thereof as they exist on the day the by-law is repealed;
- (b) all rights, obligations, assets and liabilities of the County or local board thereof pertaining to the local powers are vested in the local municipalities or local boards thereof;
- (c) financial adjustments, calculated in accordance with such criteria as may be prescribed, shall be made between the County or local board thereof and the local municipalities or local boards thereof; and
- (d) the local municipalities or local boards thereof shall pay to the County or local board thereof on or before the due date all amounts of principal and interest becoming due upon any outstanding debt of

the County or local board thereof in respect of the local powers reverting to the local municipalities or local boards thereof.

Interest

(2) If the local municipalities or local boards thereof fail to make any payment required under clause (1) (d) on or before the due date, the County or local board thereof may charge the local municipalities or local boards thereof interest at the rate of 15 per cent per annum, or such lower rate as the County or local board thereof determines, from the due date until payment is made.

Agreements

(3) If the County or local board thereof had entered into an agreement with any municipality or other person in respect of the local power reverting to the local municipalities or local boards thereof, the local municipalities or local boards thereof are bound by the agreement and the County or local board thereof is relieved of all liability under the agreement.

Disputes

**46.**—(1) If a dispute arises in respect of the financial adjustments or the vesting of assets and liabilities under subsection 42 (1) or clause 45 (1) (b), or the transfer of agreements under subsection 43 (1) or subsection 45 (3), the County, local municipality or local board affected may apply to the Municipal Board for a resolution of the dispute and the Municipal Board shall hear and determine the matter and its decision is final.

R.S.O. 1980,  
c. 347, s. 94  
does not  
apply

(2) Section 94 of the *Ontario Municipal Board Act* does not apply to a decision made under subsection (1).

Regulations

**47.**—(1) The Lieutenant Governor in Council may make regulations,

- (a) providing for the security of employment, the protection of benefits, including seniority and pensions, and early retirement options for employees affected by by-laws passed or repealed under this section;
- (b) prescribing the criteria for determining the amount of and the manner of payment of the financial adjustments under subsections 42 (2) and 45 (1) and for providing which body shall pay and which body shall receive the payments made under those subsections.

Minister's  
order

(2) The Minister may by order prescribe the local powers to which this Part applies.



## PART VIII

## WASTE DISPOSAL

- 48.** In this Part, “waste” means garbage, refuse, domestic waste, industrial solid waste or municipal refuse and such other waste as may be designated by by-law of the County Council. Definition
- 49.**—(1) On and after the 1st day of January, 1991, the County shall provide facilities for receiving, dumping and disposing of waste and no local municipality or local board thereof shall provide such facilities. County waste facilities
- (2) For the purposes of subsection (1), the County Council has the powers conferred by any general or special Act upon the local municipalities and local boards thereof for the receiving, dumping and disposing of waste. County powers
- (3) The County Council may, for each local municipality, designate one or more facilities for the receiving, dumping and disposing of waste or any class thereof. Designated facilities
- (4) If a designation has been made, a local municipality shall not utilize any facilities except the facilities that have been designated for that local municipality. Idem
- 50.**—(1) No facilities for the receiving, dumping and disposing of waste shall be provided in the County by any municipality or other person without the consent of the County Council, which consent may be given upon such terms, including the payment of compensation, as may be agreed upon. Waste disposal, County responsibility
- (2) Subsection (1) does not apply to prevent any person or any municipality which does not form part of the County for municipal purposes from providing facilities for the receiving, dumping and disposing of waste if such facilities were being lawfully provided on the 1st day of January, 1991, so long as that facility continues to operate without interruption. Existing facilities
- (3) If the County Council refuses its consent under subsection (1) or the applicant and the County Council fail to agree on the terms related to the consent, the applicant may appeal to the Municipal Board which shall hear and determine the matter and may impose such conditions as the Board considers appropriate. Disagreements to O.M.B.
- (4) The decision of the Municipal Board is final. Decision final



R.S.O. 1980,  
c. 347, s. 94  
does not  
apply

(5) Section 94 of the *Ontario Municipal Board Act* does not apply to a decision made under subsection (3).

Agreements

**51.** The County Council may enter into agreements with any municipality or other person for establishing, constructing, operating or managing, facilities for the receiving, dumping and disposing of waste.

Adoption of  
certain  
provisions

**52.** Section 42, subsection 43 (1), section 44 and clause 47 (1) (b) apply with necessary modifications to the powers granted to the County under this Part to provide facilities for receiving, dumping and disposing of waste.

Disputes

**53.** If a dispute arises in respect of the financial adjustments or the vesting of assets and liabilities, or the transfer of agreements under this Part, the board of arbitrators established under section 80 has the power to hear and determine the matter.

## PART IX

### COUNTY ROAD SYSTEM

County roads

**54.** On and after the 1st day of January, 1991, all roads under the jurisdiction and control of the County shall continue to form part of the county road system together with,

- (a) the roads that on the 31st day of December, 1990 are under the jurisdiction and control of the Sarnia Suburban Roads Commission;
- (b) the roads within the City prescribed by the Minister; and
- (c) the roads that on the 31st day of December, 1990 are covered by an agreement under section 58 of the *Public Transportation and Highway Improvement Act*.

R.S.O. 1980,  
c. 421

Dissolution  
of roads  
commission

**55.—(1)** The Sarnia Suburban Roads Commission is dissolved on the 1st day of January, 1991 and the assets and liabilities of the commission are transferred to the County on that date.

Transfer of  
benefits,  
liabilities

(2) The County has, in respect of the roads included in the county road system, all the rights, powers and benefits conferred and is subject to all liabilities imposed by statute, by-law, contract or otherwise upon the Sarnia Suburban Roads Commission.

**56.**—(1) Despite subsections 270 (1), (2) and (4) of the *Municipal Act*, the County Council may by by-law assume as a county road any highway within a local municipality.

Assumption  
of highways  
by County  
R.S.O. 1980,  
c. 302

(2) A by-law passed under subsection (1) does not take effect until assented to by the council of the local municipality.

Consent  
required

(3) The County Council may by by-law assume as a county road any highway in a local municipality that connects with a county road.

Connecting  
roads

**57.**—(1) Sections 58 and 59 of the *Public Transportation and Highway Improvement Act* do not apply to the County or the local municipalities.

R.S.O. 1980,  
c. 421, ss.  
58, 59 do  
not apply

(2) All existing agreements between the County and a local municipality under section 58 of the *Public Transportation and Highway Improvement Act* are terminated on the 1st day of January, 1991.

Existing  
agreements  
R.S.O. 1980,  
c. 421

**58.**—(1) Despite subsections 278 (1) and (2) of the *Municipal Act*, a bridge that, on the 31st day of December, 1990, is under the exclusive or joint jurisdiction and control of County Council is on the 1st day of January, 1991 transferred to and vested in the council of the local municipality that has jurisdiction over the highway on which the bridge is situate.

Bridges  
R.S.O. 1980,  
c. 302

(2) Subsection (1) does not apply to bridges,

Limitation

(a) on county roads;

(b) on a boundary line between local municipalities; or

(c) on a county boundary line.

**59.** The Minister may by order prescribe the roads within the City which are county roads.

Minister's  
order

## PART X

### HEALTH AND SOCIAL SERVICES

**60.**—(1) On and after the 1st day of January, 1991, the Lambton Health Unit shall be composed of,

Lambton  
Health Unit

(a) not more than six members appointed from and by the County Council; and

- (b) not more than two persons appointed by the Lieutenant Governor in Council upon the recommendation of the Minister of Health.

County  
responsible  
for expenses  
1983, c. 10

(2) Despite any other Act, the expenses incurred by the Lambton Health Unit in establishing and maintaining the health unit and performing its functions under the *Health Protection and Promotion Act, 1983* or any other Act shall be paid by the County.

County  
responsible  
under  
R.S.O. 1980,  
c. 188

**61.** For the purposes of the *General Welfare Assistance Act*, no local municipality shall be deemed to be a municipality and the County shall have sole responsibility as a County for all matters provided for in that Act.

Homes for  
the aged

**62.**—(1) The homes for the aged known as Twilight Haven, North Lambton and Marshall Gowland, and all assets and liabilities thereof, vest solely in the County on and after the 1st day of January, 1991.

No local  
municipality  
has authority  
under  
R.S.O. 1980,  
c. 203  
Costs

(2) No local municipality has authority to establish, erect or maintain a home for the aged under the *Homes for the Aged and Rest Homes Act*.

R.S.O. 1980,  
c. 302

(3) The costs of operating and maintaining Twilight Haven, North Lambton and Marshall Gowland shall form part of the levy under section 164 of the *Municipal Act*.

1984, c. 55  
does not  
apply to local  
municipality

**63.** No local municipality shall be deemed to be a municipality for the purposes of the *Child and Family Services Act, 1984*.

Information  
to be  
provided to  
County

**64.** Every local municipality and every officer or employee thereof shall, at the request of the officers of the County who are responsible for the administration of the Acts referred to in this Part, furnish to the County officers any information they may require for the purposes of this Act.

## PART XI

### PUBLIC LIBRARIES

County  
library board

**65.**—(1) A county library board for the entire County to be known as “The Lambton County Library Board” is hereby established on the 1st day of January, 1991 and shall be deemed to be a county library board established under Part I of the *Public Libraries Act, 1984*.

1984, c. 57



(2) Subsection 9 (6) of the *Public Libraries Act, 1984* does not apply in the County.

1984, c. 57,  
s. 9 (6)  
does not  
apply

(3) All local municipalities shall be deemed to be participating municipalities for the purposes of subsection 26 (1) of the *Public Libraries Act, 1984*.

Apportion-  
ment of  
county levy

(4) All library boards of the County, local municipalities and former municipalities are dissolved on the 1st day of January, 1991 and their assets and liabilities are transferred to the county library board established under subsection (1), without compensation.

Transfer of  
assets,  
liabilities to  
county  
library board

(5) All by-laws, rules, regulations and fees passed or established by the boards dissolved under subsection (4) are continued as by-laws, rules, regulations and fees of the county library board and shall remain in force until the earlier of,

Continuation  
of by-laws,  
etc.

(a) the date they are amended or repealed by the board; or

(b) the 31st day of December, 1992.

(6) Nothing in this section repeals or authorizes the amendment or repeal of by-laws conferring rights, privileges, franchises, immunities or exemptions that could not have been lawfully repealed by a board dissolved under subsection (4).

Certain  
by-laws  
continued

**66.** The County shall pay to each local municipality, on or before the due date, all amounts of principal and interest becoming due upon any outstanding debt of each local municipality in respect of public libraries and, if the County fails to pay the amounts before the due date, the local municipality may charge the County interest at the annual rate of 15 per cent, or such lower rate as the local municipality determines, from the due date until payment is made.

Debt  
transferred to  
County

**67.** Every person who was an employee of a board dissolved under this Part on the 1st day of July, 1990, and continues to be employed until the 31st day of December, 1990, becomes, on the 1st day of January, 1991, an employee of the county library board.

Transfer of  
employees

## PART XII

### FINANCES

**68.** In this Part,

Definitions



R.S.O. 1980,  
c. 31

“average municipal commercial mill rate” means, in respect of a local municipality, the rate obtained by dividing the total of taxes levied for all purposes, other than for school purposes and other than under sections 32 and 33 of the *Assessment Act*, on the commercial assessment for the preceding year by the total commercial assessment for the preceding year and multiplying the result by 1,000;

R.S.O. 1980,  
c. 359

“commercial assessment” means commercial assessment as defined in clause 1 (1) (b) of the *Ontario Unconditional Grants Act*;

“discounted assessment” means, for a local municipality or for a merged area, the sum of,

- (a) the product obtained by multiplying the residential and farm assessment for that local municipality or that merged area by 0.5131, and
- (b) the commercial assessment for that local municipality or that merged area;

“discounted equalized assessment” means, for each local municipality, the sum of the discounted assessment and the equivalent assessment of that local municipality divided by its prescribed equalization factor and multiplied by 100;

“discounted equalized assessment for each merged area” means the discounted assessment of the merged area divided by its prescribed equalization factor and multiplied by 100;

R.S.O. 1980,  
c. 302

“equivalent assessment” means, for a local municipality, that portion of its payments in lieu of taxes in the preceding year, as defined in clause 365 (1) (j) of the *Municipal Act*, not allocated for school purposes, divided by the average municipal commercial mill rate and multiplying the result by 1,000;

“merged area” means the area of the City of Sarnia or the area of the Town of Clearwater;

“net county levy” means the amount required for County purposes under subsection 365 (6) of the *Municipal Act* including the sums required for any board, commission or other body, apportioned to each local municipality by the County;

“net lower tier levy” means the amount required for the purposes of a local municipality under section 164 of the



*Municipal Act* including the sums required for any board, commission or other body, but excluding amounts required to be raised for County and school purposes or for a special rate imposed under section 79; R.S.O. 1980, c. 302

“residential and farm assessment” means residential and farm assessment as defined in clause 7 (1) (e) of the *Ontario Unconditional Grants Act*. R.S.O. 1980, c. 359

**69.**—(1) For purposes of apportioning the net county levy or the net lower tier levy among the respective merged areas, the Minister may, in each year, prescribe the equalization factor to apply for that year to each local municipality within the County and each merged area. Prescribed equalization factor

(2) Despite subsection 365 (6) of the *Municipal Act*, the treasurer of the County shall determine, Annual County apportionment

(a) the discounted equalized assessment of each local municipality in the County;

(b) the discounted equalized assessment of the County; and

(c) the percentage share of apportionment, correct to three decimal places, for each local municipality by dividing the discounted equalized assessment for each local municipality by the discounted equalized assessment of the County and multiplying the result by 100.

**70.**—(1) In each year, the Ministry of Municipal Affairs shall calculate and notify the City of the discounted equalized assessment for each merged area. Annual merged area apportionment

(2) Despite subsection 7 (2) of the *Ontario Unconditional Grants Act*, the net county levy and the net lower tier levy of the City shall be levied against the whole rateable property, including business assessment thereon, of the City and apportioned between the merged areas of the City in the proportion that the discounted equalized assessment for each merged area bears to the total discounted equalized assessment of both merged areas. How levies apportioned R.S.O. 1980, c. 359

(3) The rates to be levied in each merged area of the City shall be determined in accordance with subsection 7 (3) of the *Ontario Unconditional Grants Act*. Determination of rates

**71.**—(1) Despite section 70, the council of the City may by by-law in any year, before the adoption of the estimates for Interim levy

that year, levy in each of the merged areas, on the whole of the assessment for real property, including business assessment in the merged area, according to the last returned assessment roll, a sum not exceeding 50 per cent of that which would be produced by applying to such assessment the total rate for all purposes levied in the merged area in the preceding year on residential real property of public school supporters.

Adjustments

(2) The amount of any levy under subsection (1) shall be deducted from the amount of the levy made under subsection 70 (2).

Application  
of  
R.S.O. 1980,  
c. 302,  
s. 159 (5)

(3) Subsection 159 (5) of the *Municipal Act* applies to levies made under subsection (1).

Merged areas  
under  
R.S.O. 1980,  
c. 129

**72.**—(1) For the purposes of levying taxes under Part IV of the *Education Act*, the merged areas shall be deemed to be municipalities, and the council of the City shall be deemed to be the council of each merged area.

Regulations

(2) The Lieutenant Governor in Council may each year make regulations providing for the apportionment of the sums required by the Lambton County Board of Education and The Lambton County Roman Catholic Separate School Board with respect to any local municipality or merged area or parts thereof that are wholly or partly within their area of jurisdiction.

Where  
county-wide  
assessment  
R.S.O. 1980,  
c. 302

**73.** Sections 69, 70, 71 and 72 of this Part and sections 365, 366 and 368 of the *Municipal Act* cease to apply to the County and the local municipalities if the County has been subject to an assessment update under section 368b of the *Municipal Act*.

Direction of  
Minister of  
Revenue

**74.**—(1) Despite subsections 368b (3) and (3a) of the *Municipal Act*, in 1991, for the purposes of taxation in 1992, the Minister of Revenue shall make a direction under subsection 368b (2) of the *Municipal Act* for changes to be made to the assessment rolls of the local municipalities.

Grants

(2) If the Minister is of the opinion that taxes for school purposes in a local municipality may be unduly increased because of changes made to the assessment rolls of local municipalities as a result of a direction under subsection (1), the Minister may make a grant to the local municipality under such terms as the Minister considers necessary in the circumstances.

(3) If, in any year, a local municipality receives a grant under subsection (2), the local municipality shall, in that year, use the grant to reduce the increases in the amounts the local municipality is required to levy for school purposes.

Grant to be used to reduce increases

(4) Nothing in this Part prevents or restricts a local municipality from passing by-laws under section 362 or 363 of the *Municipal Act*.

Certain by-laws not affected  
R.S.O. 1980, c. 302

**75.**—(1) In 1991, the council of the City shall, in the manner prescribed by the Minister, levy on the whole of the assessment for real property and business assessment according to the last returned assessment roll pertaining to the merged area of the Town of Clearwater rates of taxation for general purposes which shall not be increased over the 1990 rates by more than the lesser of,

1991 City rates

- (a) 3.5 per cent of the rates of taxation for general purposes in the Town of Clearwater in 1990; and
- (b) the rate of inflation for the calendar year of 1990, as determined by the Consumer Price Index published by Statistics Canada.

(2) In 1992, the council of the City shall, in the manner prescribed by the Minister, levy on the whole of the assessment for real property and business assessment according to the last returned assessment roll pertaining to the merged area of the Town of Clearwater rates of taxation for general purposes which shall limit the aggregate levy for general purposes upon the merged area to the lesser of,

1992 City rates

- (a) 103.5 per cent of the dollar amount levied for general purposes in the merged area of the Town of Clearwater in 1991; and
- (b) 100 per cent plus the rate of inflation for the calendar year of 1991, as determined by the Consumer Price Index published by Statistics Canada, of the dollar amount levied for general purposes in the merged area of the Town of Clearwater in 1991.

(3) In 1993, the council of the City shall, in the manner prescribed by the Minister, levy on the whole of the assessment for real property and business assessment according to the last returned assessment roll pertaining to the merged area of the Town of Clearwater rates of taxation for general purposes which shall not be increased over the 1992 rates by more than the lesser of,

1993 City rates

- (a) 3.5 per cent of the rates of taxation for general purposes in the merged area of the Town of Clearwater in 1992; and
- (b) the rate of inflation for the calendar year of 1992, as determined by the Consumer Price Index published by Statistics Canada.

Rates,  
subsequent  
years

(4) In 1994, 1995, 1996, 1997, 1998, 1999 and 2000, the council of the City shall, in the manner prescribed by the Minister, levy on the whole of the assessment for real property and business assessment according to the last returned assessment roll pertaining to the merged area of the Town of Clearwater rates of taxation for general purposes which are different from the rates which would have been levied for such purposes but for this subsection.

Where taxes  
reduced

(5) If the Minister has made an order under this section which results in a reduction in the taxes which would have otherwise been levied in any year, the amount of the reduction shall be charged to the general funds of the City in that year.

Adjustments  
of grant total

R.S.O. 1980,  
c. 359

**76.**—(1) The Minister may by order on such conditions as the Minister considers appropriate provide for payments to be made to the City so that in each of the years 1991, 1992 and 1993 the total of all grants received by the City under the *Ontario Unconditional Grants Act* pertaining to the merged area of the Town of Clearwater and payments under this subsection is not less than the total of all grants received by the Town of Clearwater under the *Ontario Unconditional Grants Act* in 1990.

Minister's  
order

(2) The Minister may by order before the 1st day of January, 2000, on such conditions as the Minister considers appropriate, make grants or loans to the County and the local municipalities to achieve the purposes of this Act.

Appropri-  
ations

**77.** The money required for the purposes of this Act shall be paid out of the money appropriated therefor by the Legislature.

Adjustments  
of grants  
under  
R.S.O. 1980,  
c. 359

**78.**—(1) A grant under the *Ontario Unconditional Grants Act* to the County or a local municipality in any year in which an incorporation, a major boundary change or a major change in responsibility for the delivery of any service took place during that year shall be revised to reflect the incorporation, the boundary change or the change in the delivery of services.



(2) If, in any year, there is an overpayment or underpayment of grants paid to the County or a local municipality as a result of a revision under subsection (1), the Minister shall adjust any grant paid to the County or a local municipality in the immediately following year by the amount of the overpayment or underpayment.

Adjustment  
of grants by  
Minister

**79.—**(1) In this section,

Definitions

“urban service” means a service of the City not being provided generally throughout the City or not benefiting lands in the City equally, and includes any liability incurred by a former municipality with respect to such service;

“urban service area” means the area or rateable property, including the business assessment thereon, designated in a by-law under clause (2) (c) or in an order under clause (5) (c).

(2) The council of the City may, with the approval of the Municipal Board, by by-law,

By-laws  
respecting  
urban  
services

(a) identify an urban service;

(b) define which costs of the City are related to that urban service;

(c) designate upon what area or rateable property, including the business assessment thereon, of the City the related costs should be raised; and

(d) levy a special rate on that area or rateable property, including the business assessment thereon, to raise the whole or part of the related costs.

(3) The rates to be levied within each urban service area shall be determined in accordance with subsection 7 (3) of the *Ontario Unconditional Grants Act*.

Determi-  
nation of  
rates  
R.S.O. 1980,  
c. 359

(4) The council of the City may establish, amend or dissolve any number of urban service areas designated under subsection (2).

Dissolution  
of urban  
service areas

(5) Before the 1st day of January, 1991, the Minister, upon the joint application of the councils of the City of Sarnia and the Town of Clearwater, may make an order to be effective no earlier than the 1st day of January, 1991, that,

Minister's  
order

(a) identifies an urban service;



(b) defines which costs of the City will relate to that urban service; and

(c) designates upon what area or rateable property, including business assessment thereon, of the City the related costs shall be raised.

Where  
O.M.B.  
approval not  
required

(6) Where an order under subsection (5) creating an urban service area is in force and has not been amended under subsection (7), the council of the City may pass a by-law under clause (2) (d) related to that urban service area without the approval of the Municipal Board.

Amendments  
or repeal of  
order by City

(7) The council of the City may, with the approval of the Municipal Board, by by-law amend or repeal an order under subsection (5).

### PART XIII

#### MISCELLANEOUS

Board of  
arbitrators

**80.**—(1) The Minister shall appoint three persons as a board of arbitrators to make adjustments of assets and liabilities arising from any amalgamation, dissolution, other than the dissolution of a police village, and transfer of functions or services under Parts I, II, V, VIII, IX, X, XI and this Part.

Certain  
provisions of  
R.S.O. 1980,  
c. 25 apply

(2) Sections 3 to 5, 7, 9 to 11 and 13 to 15 of the *Arbitrations Act* and the Schedule to that Act apply to an arbitration under this section.

Decisions of  
board  
binding

(3) The decisions of the board of arbitrators are binding on the County, local municipalities and local boards and are not subject to appeal.

Hearing

(4) The board of arbitrators shall hold a hearing with respect to any matter set out in subsection (1) that is in dispute.



Industrial  
sites  
R.S.O. 1980,  
c. 302

**81.** Paragraph 50 of section 210 of the *Municipal Act* applies with necessary modifications to the County.

By-laws  
respecting  
emergency  
measures

**82.**—(1) If there is a conflict between a by-law passed by County Council under subclause 209 (b) (ii) or (iii) of the *Municipal Act* and a by-law passed by the council of a local municipality under those subclauses, the by-law of County Council prevails to the extent of the conflict.



(2) When a by-law passed by County Council under sub-clause 209 (b) (ii) of the *Municipal Act* is in force, the County may pass by-laws, Idem  
R.S.O. 1980,  
c. 302

- (a) with the consent of the local municipality or local board concerned, for appointing heads of departments and alternates to be members of or advisors to the emergency measures planning committee or any subcommittee thereof;
- (b) with the consent of the local municipality or local board concerned, for training employees of the local municipality or local board in their emergency functions;
- (c) for appointing members of the emergency measures planning committee or of any subcommittee thereof to be in charge of the departments or utilities throughout the County, as provided in the by-law, when an emergency occurs;
- (d) for acquiring alternative headquarters for the County Government outside the County; and
- (e) for obtaining and distributing emergency materials, equipment and supplies.

(3) The County shall be deemed to be a regional municipality and the local municipalities shall be deemed to be area municipalities of that regional municipality for the purposes of the *Emergency Plans Act, 1983*. Deeming  
provision  
respecting  
1983, c. 30

**83.** The County Council, before the 31st day of December, 1992, shall prepare, adopt and forward to the Minister for approval an amendment to the official plan of the County to cover the area of the former municipality of The Corporation of the City of Sarnia. Amendment  
to official  
plan

**84.—**(1) The County Council shall not request an amendment to this Act unless, Double  
majority vote

- (a) a majority of all the votes on County Council are cast in favour of the request; and
- (b) members of County Council representing a majority of the local municipalities cast their votes in favour of the request.

(2) For the purposes of clause (1) (b), subsection 41 (4) Idem applies with necessary modifications.

Regulations  
respecting  
employees

**85.**—(1) The Lieutenant Governor in Council may, upon the recommendation of the Minister, make regulations providing for the security of employment, the protection of benefits, including seniority and pensions, and early retirement options for employees affected by this Act.

Limitation

(2) Subsection (1) does not apply to employees affected by a by-law passed or repealed under Part VII.

Repeal of  
ss. 4 and 18

**86.** Sections 4 and 18 of this Act are repealed on the 1st day of December, 1991.

Repeals

**87.** *The City of Sarnia Act, 1925*, being chapter 103, *The City of Sarnia Act, 1977*, being chapter 101 and the *County of Lambton Act, 1981*, being chapter 92, are repealed on the 1st day of January, 1991.

Commence-  
ment

**88.**—(1) This Act, except sections 5, 6, 7, 13, 19, 20 and 21, Parts IX and X and section 87, comes into force on the day it receives Royal Assent.

Idem

(2) Sections 5 and 13, Parts IX and X and section 87 come into force on the 1st day of January, 1991.

Idem

(3) Sections 6, 7, 19, 20 and 21 come into force on the 1st day of December, 1991.

Transition,  
regular  
elections  
R.S.O. 1980,  
c. 308

(4) Despite subsection (3), the regular elections to be held in 1991 under the *Municipal Elections Act* in the area municipalities shall be conducted as if sections 6, 7 and 19 were in force.

Short title

**89.** The short title of this Act is the *Sarnia-Lambton Act, 1989*.

## SCHEDULE

### WARD 1

Beginning at the intersection of the southerly boundary of the Town of Clearwater and the centre line of the Blackwell Sideroad;

Thence northerly along the centre line of the Blackwell Sideroad and the northerly prolongation thereof to a point distant 500 metres measured northerly from the southerly high water mark of Lake Huron;

Thence easterly and parallel with the southerly high water mark of the said Lake to the easterly boundary of the Town of Clearwater;

Thence southerly along the easterly boundary of the said Town to the south easterly angle of the said Town;

Thence westerly along the southerly boundary of the said Town to the place of beginning.

#### WARD 2

Beginning at the intersection of the centre line of the King's Highway No. 402 and the centre line of the Blackwell Sideroad;

Thence northerly along the centre line of Blackwell Sideroad and the northerly prolongation thereof to a point distant 500 metres measured northerly from the southerly high water mark of Lake Huron;

Thence westerly and parallel with the southerly high water mark of the said Lake to the International Boundary between the Province of Ontario and the United States of America;

Thence southerly along the said International Boundary to the northerly boundary of the Village of Point Edward;

Thence easterly and southerly along the northerly and easterly boundaries of the said Village to the centre line of Michigan Avenue;

Thence easterly along the centre line of Michigan Avenue to the centre line of Indian Road North;

Thence southerly along the centre line of Indian Road North to the centre line of the King's Highway No. 402;

Thence easterly along the centre line of the said King's Highway to the place of beginning.

#### WARD 3

Beginning at the intersection of the westerly boundary of the City of Sarnia and the centre line of Michigan Avenue;

Thence easterly along the centre line of Michigan Avenue to the centre line of Indian Road North;

Thence southerly along the centre line of Indian Road North to the centre line of the King's Highway No. 402;

Thence easterly along the centre line of the said King's Highway to the centre line of the Blackwell Sideroad;

Thence southerly along the centre line of the Blackwell Sideroad to the northerly limit of Concession V of the former Township of Sarnia;

Thence westerly along the northerly limit of the said Concession to the easterly limit of the King's Highway No. 40;

Thence westerly to and along the centre line of Wellington Street to the centre line of Indian Road South;

Thence northerly along the centre line of Indian Road South to the centre line of London Road;

Thence westerly along the centre line of London Road and the westerly prolongation thereof to the International Boundary between the Province of Ontario and the United States of America;

Thence northerly along the said International Boundary to the southerly boundary of the Village of Point Edward;

Thence easterly and northerly following the boundaries between the Village of Point Edward and the City of Sarnia to the place of beginning.

#### WARD 4

Beginning at the intersection of the southerly boundary of the Town of Clearwater and the centre line of the Blackwell Sideroad;

Thence northerly along the centre line of the Blackwell Sideroad to the northerly limit of Concession V of the former Township of Sarnia;

Thence westerly along the northerly limit of the said Concession to the easterly limit of the King's Highway No. 40;

Thence westerly to and along the centre line of Wellington Street to the centre line of Indian Road South;

Thence northerly along the centre line of Indian Road South to the centre line of London Road;

Thence westerly along the centre line of London Road and the westerly prolongation thereof to the International Boundary between the Province of Ontario and the United States of America;

Thence southerly along the said International Boundary to the southerly boundary of the City of Sarnia;

Thence easterly along the southerly boundary of the City of Sarnia and the Town of Clearwater to the place of beginning.







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2ND SESSION, 34TH LEGISLATURE, ONTARIO

38 ELIZABETH II, 1989

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# Bill 35

*(Chapter 41  
Statutes of Ontario, 1989)*

**An Act respecting the  
amalgamation of the City of Sarnia and the  
Town of Clearwater and the addition of the  
amalgamated City to the County of Lambton**

**The Hon. J. Eakins**  
*Minister of Municipal Affairs*



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<i>1st Reading</i>	June 20th, 1989
<i>2nd Reading</i>	July 12th, 1989
<i>3rd Reading</i>	July 13th, 1989
<i>Royal Assent</i>	July 13th, 1989

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**Bill 35**

**1989**

**An Act respecting the  
amalgamation of the City of Sarnia and the  
Town of Clearwater and the addition of the  
amalgamated City to the County of Lambton**

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HER MAJESTY, by and with the advice and consent of the Legislative Assembly of the Province of Ontario, enacts as follows:

## Definitions

**1. In this Act,**

“City” means The Corporation of the City of Sarnia-Clearwater as created by the amalgamation of the former municipalities under section 2;

“City of Sarnia” means the former municipality of The Corporation of the City of Sarnia;

“County” means The Corporation of the County of Lambton;

“County Council” means the council of the County;

“former municipalities” means The Corporation of the City of Sarnia and The Corporation of the Town of Clearwater as they existed before the 1st day of January, 1991;

“local municipality” means a city, town, village and township forming part of the County for municipal purposes but does not include a former municipality;

“Minister” means the Minister of Municipal Affairs;

“Municipal Board” means the Ontario Municipal Board;

“municipality” means a municipality, as defined in the *Municipal Affairs Act*, and a metropolitan, regional or district municipality and the County of Oxford or a local board of a metropolitan, regional or district municipality or of the County of Oxford; R.S.O. 1980, c. 303

“pre-election period” means the period from the 1st day of January, 1991 until the 30th day of November, 1991, inclusive;

“prescribed” means prescribed by regulations made under this Act;

“Town of Clearwater” means the former municipality of The Corporation of the Town of Clearwater.

## PART I

### LOCAL MUNICIPALITIES

**2.—(1)** On the 1st day of January, 1991, The Corporation of the City of Sarnia and The Corporation of the Town of Clearwater are amalgamated under the name of “The Corporation of the City of Sarnia-Clearwater”. Amalgamation

**(2)** Despite section 5 of the *Territorial Division Act*, the City forms part of the County for municipal purposes. City forms part of County  
R.S.O. 1980, c. 497

**(3)** The City shall not apply for the annexation or amalgamation of any land before the 1st day of January, 2016, unless the County Council and the council of every local municipality the lands of which are part of the proposed annexation or Future amalgamation, annexation by agreement

amalgamation agree, by resolution, to the proposed application being made.

Name of City  
to be put to  
a vote

**3.—**(1) The City shall submit the question “Do you want the new City to be named Sarnia” to the electors of the City at the 1991 regular election.

Change of  
name

(2) If the majority of votes cast in response to the question are in the affirmative, the name of the City shall become The Corporation of the City of Sarnia effective the 1st day of January, 1992.

Idem

(3) After the 1st day of January, 1992, the Minister may by order alter the name of the City.

Composition  
of interim  
City council  
R.S.O. 1980,  
c. 302

**4.—**(1) Despite subsection 30 (1) of the *Municipal Act*, during the pre-election period, the council of the City shall be composed of,

- (a) a mayor, who shall be the person who was the mayor of the City of Sarnia on the 31st day of December, 1990;
- (b) a deputy mayor, who shall be the person who was the mayor of the Town of Clearwater on the 31st day of December, 1990;
- (c) a reeve, who shall be the person who was the reeve of the Town of Clearwater on the 31st day of December, 1990;
- (d) a deputy reeve, who shall be the person who was the deputy reeve of the Town of Clearwater on the 31st day of December, 1990; and
- (e) twelve other members,
  - (i) eight of whom shall be the persons who were the members of the council, except the mayor, of the City of Sarnia on the 31st day of December, 1990, and
  - (ii) four of whom shall be the persons who were the members of the council, except the mayor, reeve and deputy reeve, of the Town of Clearwater on the 31st day of December, 1990.

First meeting

(2) The first meeting of the council shall be held not later than the 8th day of January, 1991.

(3) Each member of council has one vote.

One vote

(4) Despite section 72 of the *Municipal Act*, if the mayor of the City is absent from the municipality or is unable or unwilling to act or the office of mayor is vacant, the deputy mayor shall act in the place of the mayor and, while so acting, has all the rights and powers of the mayor.

Acting mayor  
R.S.O. 1980,  
c. 302

**5.**—(1) The City shall consist of four wards as described in the Schedule.

Wards

(2) All wards in the former municipalities are dissolved.

Dissolution  
of former  
wards

**6.**—(1) Despite sections 30, 31, 32, 34 and 36 of the *Municipal Act*, but subject to section 7, the council of each local municipality shall be composed of a mayor, who shall be elected by a general vote of the electors of the local municipality and who shall be the head of the council, and the following other members:

Composition  
of councils

1. The City—eight members consisting of,

- i. four members who shall be elected by wards, one from each ward, as members of the council of the City and of the County Council, and
- ii. four members who shall be elected by wards, one from each ward, as members of the council of the City.

2. A town—six members who shall be elected by a general vote of the electors of the town.

3. A township—four members who shall be elected by a general vote of the electors of the township.

4. A village—four members who shall be elected by a general vote of the electors of the village.

(2) Each member of the council of a local municipality has one vote.

One vote

(3) Despite section 37 of the *Municipal Act*, a person is qualified to be elected or hold office under paragraph 1 of subsection (1) if, in addition to being qualified under section 37 of the *Municipal Act*, that person at any time during the period commencing on the Tuesday following the first Monday in September in an election year and ending on the Monday in October that precedes polling day by twenty-eight

Qualifi-  
cations to  
hold office



days is a resident in or is the owner or tenant of land in or is the spouse of such an owner or tenant in the ward in which that person is seeking to be elected or to hold office.

O.M.B.  
order  
R.S.O. 1980,  
c. 302

7.—(1) Upon the application of a local municipality under subsection 13 (2) of the *Municipal Act*, or upon the petition of electors under subsection 13 (3) of that Act, the Municipal Board may, by order,

- (a) divide or redivide the local municipality into wards and designate the name or number each ward shall bear and declare the date when the division or redivision takes effect;
- (b) alter or dissolve any or all of the wards in the local municipality and declare the date when the alteration or dissolution takes effect; and
- (c) vary the composition of the council of the local municipality.

Limitation on  
order

(2) No order made under subsection (1),

- (a) shall take effect before the 1st day of December, 1994; or
- (b) shall alter the total number of members who represent the local municipality on the County Council or the number of votes assigned to the members under this Act.

Idem

(3) Despite subsection (1), the mayor of the local municipality shall continue to be elected by a general vote of the electors of the local municipality and shall be the head of council of the local municipality and a member of the County Council.

Where  
inquiry by  
Minister

(4) Where the Minister is inquiring into the structure, organization and methods of operation of a local municipality or the County, the Minister may give notice to the Municipal Board of the inquiry and request that any application or petition made under subsection (1) be deferred until the inquiry has been completed.

Idem

(5) If notice is given under subsection (4), all proceedings in the application or petition are stayed until the Minister gives notice to the Municipal Board that they may be continued.

No board of  
control

(6) A local municipality shall not have a board of control.



**8.**—(1) Every by-law and resolution of a former municipality shall be deemed to be a by-law or resolution of the City and shall remain in force in the area of the former municipality until the earlier of,

By-laws,  
resolutions of  
former  
municipalities

(a) the date it is amended or repealed by the council of the City; or

(b) the 31st day of December, 1992.

(2) Despite subsection (1), any by-law of a former municipality passed under section 34 of the *Planning Act, 1983*, or a predecessor of that section, and any official plan of a former municipality approved under the *Planning Act, 1983*, or a predecessor of that Act, shall remain in force until amended or repealed.

By-laws,  
official plans  
under  
1983, c. 1

(3) If a former municipality has commenced procedures to enact a by-law that requires the approval of a minister of the Crown, the Municipal Board or a provincial agency and the approval has not been obtained before the 31st day of December, 1990, the council of the City may continue the procedures to enact the by-law and subsection (1) applies with necessary modifications to the by-law.

By-laws that  
require  
approval

(4) Nothing in this section repeals or authorizes the amendment or repeal of,

By-laws,  
resolutions  
not affected

(a) by-laws or resolutions of the former municipalities passed under section 45, 58 or 61 of the *Drainage Act* or a predecessor of those sections; and

R.S.O. 1980,  
c. 126

(b) by-laws or resolutions conferring rights, privileges, franchises, immunities or exemptions that could not have been lawfully repealed by the councils of the former municipalities.

**9.** Except as otherwise provided in this Act, the assets and liabilities of the former municipalities and their local boards become assets and liabilities of the City or a local board thereof without compensation, and the City and its local boards stand in the place of the former municipalities and their local boards.

Assets and  
liabilities  
transferred to  
City

**10.** All taxes, charges or rates levied by a former municipality under any general or special Act that are due and unpaid on the 31st day of December, 1990 shall, after that date, be taxes, charges or rates due and payable to the City and may be collected and recovered by the City as if the taxes, charges or rates had been imposed by the City.

Taxes,  
charges, rates  
transferred to  
City

Dissolution  
of  
committees  
of adjustment

**11.**—(1) Subject to subsection (4), on the 1st day of January, 1991, the committees of adjustment of the former municipalities are dissolved.

City to  
establish  
committee of  
adjustment

(2) The City shall establish a committee of adjustment under section 43 of the *Planning Act, 1983*.

Applications  
continued

(3) All applications to the committees of adjustment of the former municipalities shall be deemed to be applications to and shall be continued by the committee of adjustment of the City.

Continuing  
matters

(4) The committees of adjustment dissolved under subsection (1) and the terms of office of the members of the committees shall continue to the 31st day of January, 1991 for the purpose of making a decision on any application for which a hearing is completed before the 1st day of January, 1991.

Dissolution  
of  
committees,  
boards under  
1982, c. 7,  
R.S.O. 1980,  
cc. 80, 417

**12.**—(1) The council of the City shall be deemed to be a recreation committee under the *Ministry of Tourism and Recreation Act, 1982*, a committee of management of a community recreation centre under the *Community Recreation Centres Act* and a board of park management under the *Public Parks Act* and all such committees and boards of the former municipalities are dissolved on the 1st day of January, 1991.

Idem

(2) All by-laws and resolutions of the boards and committees dissolved under subsection (1) are continued as by-laws and resolutions of the City, and shall remain in force until the earlier of,

(a) the date they are amended or repealed by the City;  
or

(b) the 31st day of December, 1992.

Certain  
by-laws,  
resolutions  
continue

(3) Nothing in this section repeals or authorizes the amendment or repeal of by-laws or resolutions conferring rights, privileges, franchises, immunities or exemptions that could not have been lawfully repealed by the boards and committees dissolved under subsection (1).

Repeal of  
certain  
by-laws,  
resolutions,  
appointments

**13.**—(1) Despite section 8,

(a) the by-laws and resolutions of the City of Sarnia establishing and appointing members to the Canada Day Committee, Committee of Parks and Recreation, Committee of Management of Marshall Gowland Manor, Planning Advisory Committee,

Sarnia Heritage Committee and the Sarnia Museum Board, all of the City of Sarnia, are repealed;

- (b) the by-laws and resolutions of the Town of Clearwater establishing and appointing members to the Planning Advisory Committee of the Town of Clearwater are repealed; and
- (c) the terms of office of the appointees of the City of Sarnia to the Property Standards Committee of the City of Sarnia are terminated.

(2) Nothing in this section prevents the City from or relieves the City of any responsibility for establishing or making appointments to boards and committees. Appointments

**14.**—(1) Despite section 8, the City, on or before the 31st day of January, 1991, shall, Fire departments

- (a) repeal the by-laws of the City of Sarnia and the Town of Clearwater establishing their respective fire departments; and
- (b) establish a fire department for the City.

(2) Every person who is a member of the fire department of the City of Sarnia or the Town of Clearwater on the 1st day of July, 1990 and continues to be a member until the 31st day of December, 1990 becomes a member of the fire department established under clause (1) (b). Fire fighters

(3) In subsection (2), “member” means a full-time fire fighter and a volunteer fire fighter as defined in the *Fire Departments Act*. Definition  
R.S.O. 1980,  
c. 164

**15.** Except as otherwise provided in this Act, the City or a local board thereof shall offer to employ every person who was employed by a former municipality or a local board thereof on the 1st day of July, 1990 and who continued to be so employed until the 31st day of December, 1990. Offer of  
employment

**16.**—(1) The Police Village of Inwood and the Police Village of Florence are dissolved on the 1st day of January, 1991. Dissolution  
of police  
villages

(2) The Municipal Board, upon the application of a local municipality or a local board thereof or of its own motion, may exercise the powers under section 25 of the *Municipal Act* consequent upon the dissolutions. Further  
powers  
R.S.O. 1980,  
c. 302

No further  
appeal  
R.S.O. 1980,  
c. 347

(3) Sections 94 and 95 of the *Ontario Municipal Board Act* do not apply to decisions or orders made in the exercise of the powers under subsection (2).

## PART II

### COUNTY COUNCIL

Application  
R.S.O. 1980,  
c. 302

**17.** This Part applies despite sections 27, 28 and 29 of the *Municipal Act*.

Interim  
County  
Council

**18.**—(1) During the pre-election period, the County Council shall have thirty-seven members consisting of,

- (a) the mayor, reeve and deputy reeve of the City;
- (b) the reeve of the Village of Alvinston, the Village of Arkona, the Village of Oil Springs and the Village of Thedford; and
- (c) the reeve and deputy reeve of the Town of Forest, the Town of Petrolia, the Village of Grand Bend, the Village of Point Edward, the Village of Watford, the Village of Wyoming, the Township of Bosanquet, the Township of Brooke, the Township of Dawn, the Township of Enniskillen, the Township of Euphemia, the Township of Moore, the Township of Plympton, the Township of Sombra and the Township of Warwick.

Distribution  
of votes

(2) The members of the County Council under subsection (1) shall have a total of seventy-three votes of which,

- (a) the mayor of the City shall have ten votes;
- (b) the reeve and deputy reeve of the City shall each have nine votes;
- (c) the reeve of the Township of Bosanquet and the Township of Moore shall each have three votes;
- (d) the reeve of the Town of Petrolia, the Township of Enniskillen, the Township of Plympton and the Township of Sombra shall each have two votes;
- (e) the deputy reeve of the Township of Bosanquet, the Township of Moore and the Township of Plympton shall each have two votes; and
- (f) all other members shall have one vote.



(3) The first meeting of the County Council shall be held after the council of the City has held its first meeting under subsection 4 (2) but, in any event, not later than the 15th day of January, 1991. First meeting

(4) Despite subsection 51 (1) of the *Municipal Act*, the County Council established under subsection (1) shall, at the first meeting at which a majority of the members is present, elect one of its members to be warden and, for such election, each member of County Council shall have one vote. Warden  
R.S.O. 1980,  
c. 302

(5) The term of the warden of the County holding office on the 30th day of November, 1990 is extended until a new warden is elected under subsection (4). Term of  
office

**19.—**(1) The County Council shall be composed of, Composition  
of County  
Council

(a) the mayor of each local municipality; and

(b) the four county ward members of the council of the City.

(2) The members of the County Council under subsection (1) shall have a total of thirty-seven votes of which, Distribution  
of votes

(a) the mayor and each county ward member of the council of the City shall have three votes;

(b) the mayor of the Township of Bosanquet, the Township of Moore and the Township of Plympton shall each have two votes; and

(c) all other members shall have one vote.

(3) The County Council shall review the distribution of votes under subsection (2) on or before the 1st day of January, 2001. Review

(4) Despite subsection 18 (2) and subsection (2) of this section, upon the recommendation of the Minister, the Lieutenant Governor in Council may by order provide for the manner in which the County Council votes of the mayors of municipalities being amalgamated should be distributed to the local municipalities, other than the City, that would exist after such amalgamation. Distribution  
of votes of  
mayors

**20.—**(1) Despite subsections 19 (2), for the purposes of electing the warden of County Council, each member shall have one vote. Election of  
warden



County  
warden

(2) The warden of the County Council shall bear the title of county warden.

Vacancies

**21.** The seat of a mayor of a local municipality and the seat of a county ward member of the council of the City becomes vacant if his or her seat on the County Council is declared vacant by the County Council.

Offer of  
employment

**22.** The County or a local board thereof shall offer to employ every person who, on the 1st day of July, 1990, was employed in any undertaking carried on by or on behalf of any former or local municipality or local board thereof that is assumed by the County or a local board thereof under this Act and who continues to be so employed until the 31st day of December, 1990.

By-laws,  
resolutions  
continued

**23.—(1)** Every by-law and resolution of a former or local municipality in respect of any undertaking carried on by or on behalf of a former or local municipality that is assumed by the County under this Act shall be deemed to be a by-law or resolution of the County and shall remain in force in the area of the former or local municipality until the earlier of,

(a) the date it is amended or repealed by the council of the County; or

(b) the 31st day of December, 1992.

By-laws that  
require  
approval

(2) If a former or local municipality has commenced procedures to enact a by-law that requires the approval of a minister of the Crown, the Municipal Board or a provincial agency and the approval has not been obtained before the 31st day of December, 1990, the council of the County may continue the procedures to enact the by-law and subsection (1) applies with necessary modifications to the by-law.

By-laws,  
resolutions  
not affected

(3) Nothing in this section repeals or authorizes the amendment or repeal of by-laws or resolutions conferring rights, privileges, franchises, immunities or exemptions that could not have been lawfully repealed by the councils of the former municipalities.

Assets and  
liabilities  
transferred to  
County

**24.** All assets and liabilities of a former or local municipality or a local board thereof in respect of any undertaking carried on by or on behalf of any former or local municipality or local board thereof that is assumed by the County or a local board thereof under this Act become assets and liabilities of the County or a local board thereof without compensation, and the County and its local boards stand in the place of the former or local municipalities and their local boards.

## PART III

## FORMER MUNICIPALITIES

**25.**—(1) The City of Sarnia and the Town of Clearwater Agreement shall enter into an agreement with respect to,

- (a) fee structures;
- (b) capital improvements;
- (c) the adequacy of public buildings;
- (d) maintenance of current levels of services;
- (e) shared capital expenditures;
- (f) impost fees;
- (g) capital improvements;
- (h) cash in lieu of parkland;
- (i) organizational structures;
- (j) the financing of capital expenditures;
- (k) capital budgets;
- (l) equipment reserve accounts;
- (m) contributions to reserve accounts;
- (n) shoreline protection;
- (o) public transit;
- (p) rural water supply;
- (q) water meters; and
- (r) major recreation complexes.

(2) The councils of the County, the City of Sarnia and the Town of Clearwater shall establish a joint implementation Joint committee committee to make recommendations with respect to the agreement and any other matter set out in this Act.

(3) The joint committee shall submit its recommendations Recommendations to be submitted to Minister to the Minister on or before the 1st day of May, 1990.

Order  
effecting  
recommen-  
dations

(4) Subject to any other Act, the Lieutenant Governor in Council may, upon the recommendation of the Minister, by order give effect to any recommendation of the joint committee.

## PART IV

### SARNIA HYDRO

Hydro  
commission

**26.**—(1) A hydro-electric power commission for the City is hereby established on the 1st day of January, 1991 and shall be deemed to be a commission established under Part III of the *Public Utilities Act* and a municipal commission within the meaning of the *Power Corporation Act*.

R.S.O. 1980,  
cc. 423, 384

Composition  
of  
commission

(2) Despite section 41 of the *Public Utilities Act*, the hydro-electric power commission shall,

- (a) during the pre-election period, be composed of,
  - (i) the members of the commission dissolved under subsection (5), and
  - (ii) the deputy mayor and reeve of the City; and
- (b) after the pre-election period, be composed of,
  - (i) the mayor of the City, and
  - (ii) four other members who are qualified electors in the City under the *Municipal Elections Act* who shall be elected by a general vote of the electors of the City.

R.S.O. 1980,  
c. 308

Term of  
office

(3) A member of the commission shall hold office for the same term as the members of council or until the successor of the member is elected or appointed.

Delegate of  
mayor

(4) The council of the City may by by-law, passed with the written consent of the mayor, appoint a delegate from among the members of the council to represent the mayor on the commission.

Dissolution

(5) The Hydro-Electric Commission of the City of Sarnia is dissolved on the 1st day of January, 1991.

Transfer of  
assets,  
liabilities

(6) On the 1st day of January, 1991, the assets of the Town of Clearwater, the assets under the control and management of the commission dissolved under subsection (5) and the liabilities of the Town of Clearwater and of such commission

that relate to the distribution and supply of electrical power become assets under the control and management of and liabilities of the commission established under subsection (1), without compensation.

(7) On the 1st day of January, 1991, the commission established under subsection (1) shall acquire the retail distribution facilities within the Town of Clearwater used by Ontario Hydro on the 31st day of December, 1990 in the retail distribution of power, including equipment leased by Ontario Hydro to retail customers within the Town of Clearwater for the use of such power, and the price of the facilities shall be equal to the original cost of the facilities less the sum of the accumulated net retail equity of the customers supplied with power through the facilities and the accumulated depreciation associated with the facilities.

Purchase of retail distribution facilities from Ontario Hydro

(8) In subsection (7),

Definitions

“accumulated net retail equity” means the portion of the equity accumulated through debt retirement appropriations recorded for the rural power district relating to Ontario Hydro’s rural retail system plus the portion of the balance recorded for rural retail customers in the Stabilization of Rates and Contingencies Account, in the books of Ontario Hydro;

“retail distribution facilities” means works for the transmission and supply of power at voltages less than 50 kilovolts other than works located within a transformer station that transforms power from voltages greater than 50 kilovolts to voltages less than 50 kilovolts.

(9) All by-laws and resolutions of the Town of Clearwater and of the commission dissolved under subsection (5) that relate to the distribution and supply of electrical power are continued as by-laws and resolutions of the commission established under subsection (1), and shall remain in force until the earlier of,

Continuation of by-laws, resolutions

(a) the date they are amended or repealed by the commission; or

(b) the 31st day of December, 1992.

(10) Nothing in this section repeals or authorizes the amendment or repeal of by-laws or resolutions conferring rights, privileges, franchises, immunities or exemptions that could not have been lawfully repealed by the Town of

Certain by-laws, resolutions remain effective



Clearwater or by the commission dissolved under subsection (5).

## PART V

### POLICE

Boards of  
Commis-  
sioners of  
Police

**27.**—(1) On the 1st day of January, 1990, The Board of Commissioners of Police of the City of Sarnia and The Board of Commissioners of Police of the Town of Clearwater are amalgamated and the new board shall be deemed to be a board established under section 8 of the *Police Act*.

R.S.O. 1980,  
c. 381

Interim  
board

(2) Despite section 8 of the *Police Act*, from the 1st day of January, 1990 to the 30th day of November, 1991, inclusive, the board shall be composed of the members of the boards amalgamated under this section.

Composition  
of board

(3) On and after the 1st day of December, 1991, the board shall be composed of those members provided for under section 8 of the *Police Act*.

Temporary  
name

(4) During 1990, the board shall be called “The Board of Commissioners of Police of the City of Sarnia and the Town of Clearwater”.

Police service

(5) During 1990, the board is responsible for providing police service for the City of Sarnia and the Town of Clearwater and, for the purpose of exercising its powers under any general or special Act, the City of Sarnia and the Town of Clearwater shall be deemed to be amalgamated as a city municipality.

Idem

(6) On and after the 1st day of January, 1991, the board is responsible for providing police service for the City.

Local board

**28.**—(1) During 1990, the board shall be deemed to be a local board of the City of Sarnia and not of the Town of Clearwater.

Rights  
protected

(2) Despite subsection (1), a resident or elector of the Town of Clearwater has the same rights and privileges as a resident or elector of the City of Sarnia relating to police matters.

Transfer to  
City

(3) On the 1st day of January, 1991, the board shall continue as the board of commissioners of police of the City and a local board of the City.



**29.**—(1) The board shall, in preparing its 1990 estimates under subsection 14 (2) of the *Police Act*, show separately the amount required to provide police service in the Town of Clearwater and in the City of Sarnia.

Estimates  
R.S.O. 1980,  
c. 381

(2) The amount of the estimates for providing police service in the Town of Clearwater shall be deemed to be a debt of the Town of Clearwater falling due in 1990 for the purposes of section 164 of the *Municipal Act*, and the Town of Clearwater shall pay this amount to the City of Sarnia no later than the 30th day of June, 1990.

Idem  
R.S.O. 1980,  
c. 302

(3) If there is a disagreement between the City of Sarnia and the Town of Clearwater on how the estimates are broken down under subsection (1), the City of Sarnia or the Town of Clearwater may refer the matter to the Ontario Police Commission and the decision of the Ontario Police Commission is final.

Disagree-  
ments

**30.** On the 1st day of January, 1990, the assets under the control and management of the boards amalgamated under subsection 27 (1) and all liabilities of such boards become assets under the control and management of and liabilities of the board, without compensation.

Transfer of  
assets,  
liabilities

**31.**—(1) On the 1st day of January, 1990, all by-laws and resolutions of the boards amalgamated under subsection 27 (1) are continued as by-laws and resolutions of the board and shall remain in force in the former municipality for which they were passed until the earlier of,

Continuation  
of by-laws,  
resolutions

(a) the date they are amended or repealed by the board; or

(b) the 31st day of December, 1990.

(2) Nothing in this section repeals or authorizes the amendment or repeal of by-laws or resolutions conferring rights, privileges, franchises, immunities or exemptions that could not have been lawfully repealed by the boards amalgamated under subsection 27 (1).

Certain  
by-laws,  
resolutions  
remain  
effective

**32.** On and after the 1st day of January, 1991, the board and the members of the police force of the City shall have the same duties with respect to by-laws of the County as they do with respect to by-laws of the City.

Responsi-  
bility for  
County  
enforcement

**33.** Every person who is a member of the police force of the Town of Clearwater or of the police force of the City of Sarnia on the 1st day of July, 1989, and who continues to be a

Transfer of  
police  
personnel

member until the 31st day of December, 1989, becomes on the 1st day of January, 1990 a member of the police force created by the amalgamation under subsection 27 (1).

## PART VI

### BOUNDARY ADJUSTMENTS

Application  
of  
1981, c. 70

**34.**—(1) This Part applies to applications made to the Minister under section 2 of the *Municipal Boundary Negotiations Act, 1981*, that are being processed on the day this Part comes into force, and to future applications made under that section before the 1st day of January, 1991, to resolve an intermunicipal boundary issue or an intermunicipal boundary-related issue in the County.

Idem

(2) Subsection (1) does not apply to an issue involving a boundary of the County unless, in the opinion of the Minister, that issue is of a minor nature.

1981, c. 70  
does not  
apply

(3) Except as otherwise provided in this Part, the *Municipal Boundary Negotiations Act, 1981* does not apply to an application to which this Part applies.

Exception

(4) Sections 15 to 21 of the *Municipal Boundary Negotiations Act, 1981* apply with necessary modifications to an application to which this Part applies and to an order made under section 40.

Boundary  
application  
committee

**35.**—(1) The warden of County Council shall, within thirty days of this Part coming into force, appoint a boundary application committee.

Composition  
of committee

(2) The committee shall have five members consisting of,

(a) the warden;

(b) two members of County Council representing towns or villages; and

(c) two members of County Council representing townships.

Presiding  
officer

(3) The members of the committee shall appoint a presiding officer.

Guidelines

**36.** The committee shall establish guidelines for considering boundary applications in consultation with the Ministry of Municipal Affairs.

**37.**—(1) For each application to which this Part applies, the committee shall, having regard for the guidelines established under section 36, Duties of committee

- (a) determine and inquire into the issues raised by the application;
- (b) determine the party municipalities which have a substantial interest in the issues raised; and
- (c) obtain the opinion of the party municipalities and of any local board that the committee considers is affected by the application, on the issues raised by the application.

(2) Subject to subsections (4) and (5), the committee shall Idem prepare and submit to County Council a report setting out,

- (a) the issues;
- (b) the party municipalities in respect of each issue;
- (c) the extent of agreement or disagreement on the issues;
- (d) any agreement the party municipalities have reached on any of the issues;
- (e) the recommendations of the committee on how the issues raised by the application should be resolved; and
- (f) any other matters the committee considers appropriate.

(3) The committee may make recommendations under Recommendations clause (2) (e) with respect to,

- (a) the matters set out in paragraphs 1 to 24 of section 14 of the *Municipal Boundary Negotiations Act*, 1981, c. 70 1981;
- (b) the name of a local municipality; and
- (c) in the event the committee recommends an amalgamation, how the County Council votes of the mayors of the municipalities being amalgamated should be distributed to the local municipalities, other than the City, that would exist after such amalgamation.

Public  
meeting

(4) The committee shall, before preparing its report, hold at least one public meeting for the purpose of obtaining information, comments or opinions regarding the application.

Idem

(5) The committee shall, after preparing its report and before submitting it to County Council, hold at least one public meeting for the purpose of obtaining submissions and comments from the public in respect of the contents of the report.

Amendments  
to report

(6) The committee may amend its report after the public meeting required under subsection (5) and before submitting it to County Council.

Notice of  
meeting

(7) Notice of a public meeting required under subsection (4) or (5) shall be given at least fifteen days in advance of each meeting by publishing it in a newspaper having general circulation in the party municipalities.

County  
proposal

**38.—**(1) The County Council shall consider the report of the committee and shall, within sixty days after receiving the report and having regard to the guidelines established by the committee under section 36, submit to the Minister a proposal with respect to the resolution of the issues raised by the application.

Recommen-  
dations

(2) The proposal may contain recommendations with respect to the matters set out in subsection 37 (3).

Action by  
Minister

**39.** The Minister shall, within sixty days of receipt of the proposal,

- (a) submit to the Lieutenant Governor in Council a recommendation with respect to one or more of the matters set out in subsection 37 (3);
- (b) refer any issue back to County Council or the committee for further consideration;
- (c) terminate further consideration of the application;
- (d) refer any issue to the Municipal Board to hear any party municipality and, after a hearing, to make recommendations thereon; or
- (e) take such other action as the Minister considers appropriate.

Order

**40.** Upon receipt of the recommendation of the Minister, the Lieutenant Governor in Council may by order provide for one or more of the matters set out in subsection 37 (3).



## PART VII

## ASSUMPTION OF LOCAL POWERS BY THE COUNTY

**41.**—(1) In this Part, “local power” means a power that is conferred by any general or special Act on local municipalities or local boards thereof and that is prescribed by the Minister. Local power

(2) The County Council may pass by-laws to assume any local power for all of the local municipalities. Assumption of local power

(3) No by-law under subsection (2) shall be passed or repealed unless, Double majority vote

(a) a majority of all the votes on County Council are cast in its favour; and

(b) members of County Council representing a majority of the local municipalities cast their votes in its favour.

(4) For the purpose of clause (3) (b), the members of County Council representing the City shall only be considered to have cast their votes in favour of a by-law if at least three of the City representatives cast their votes in its favour. Idem

(5) When a by-law passed under subsection (2) comes into effect, Effect of by-law

(a) the County is responsible for the local powers assumed by the County in all of the local municipalities;

(b) the County has the powers conferred by any general or special Act upon the local municipalities or local boards thereof related to the local powers assumed by the County;

(c) no local municipality shall exercise the local powers assumed by the County and any by-law or other measure of a local municipality under that power is of no effect; and

(d) no local municipality shall provide any service or facility under the local power assumed by the County within the County without the consent of County Council, which consent may be given upon such conditions, including the payment of compensation, as may be agreed upon.



Appeal to  
O.M.B.

(6) If consent is refused under clause (5) (d) or the council of the local municipality and the County Council fail to agree on the conditions related to the consent, the applicant may appeal to the Municipal Board which shall hear and determine the matter.

Decision of  
Board final

(7) The Municipal Board may impose such conditions as it considers appropriate and the decision of the Municipal Board is final.

No further  
appeal  
R.S.O. 1980,  
c. 347  
Transfer of  
rights, obliga-  
tions, etc.

(8) Section 94 of the *Ontario Municipal Board Act* does not apply to a decision made under subsection (7).

**42.**—(1) All rights, obligations, assets and liabilities of a local municipality or local board thereof pertaining to the local powers assumed by the County are vested in the County and financial adjustments, calculated in accordance with such criteria as may be prescribed, shall be made between the County and the local municipalities or local boards thereof.

Assumption  
by County of  
debt

(2) The County shall pay to the local municipality or local board thereof on or before the due date all amounts of principal and interest becoming due upon any outstanding debt of that local municipality or local board in respect of the local powers assumed by the County.

Interest

(3) If the County fails to make any payment required under subsection (2) on or before the due date, the local municipality or local board may charge the County interest at the rate of 15 per cent per annum, or such lower rate as the local municipality or local board determines, from the due date until payment is made.

Agreements

**43.**—(1) If a local municipality or local board thereof had entered into an agreement with any municipality or other person in respect of the local power assumed by the County, the County shall be bound by and entitled to the benefit of the agreement and the local municipality or local board thereof is relieved of all liability under the agreement.

Idem

(2) The County Council may enter into agreements with any municipality or other person for establishing, constructing, operating or managing any service or facility that is within the jurisdiction of the County Council as a result of the passage of the by-law under subsection 41 (2).

Rates  
R.S.O. 1980,  
c. 302

**44.**—(1) Despite sections 368 and 368e of the *Municipal Act*, the County Council may by by-law provide for imposing on and collecting from the local municipalities for which it is providing services or facilities under the assumed local powers

a rate sufficient to pay the whole, or such portion as the by-law may specify, of the expenditures and capital costs including debenture charges related to the services or facilities and such rate may vary on any basis the County Council considers appropriate and specifies in the by-law.

(2) All rates under subsection (1) constitute a debt of the local municipality to the County and are payable at such times and in such amounts as may be specified by by-law of the County Council. Idem

(3) Despite sections 368 and 368e of the *Municipal Act*, a local municipality may, Collection of rates  
R.S.O. 1980,  
c. 302

- (a) pay the whole or part of the amount chargeable to it under this section out of its general funds;
- (b) pass by-laws for collecting the whole or part of the amount chargeable to it under this section in the same manner as that local municipality could have collected the amount if the local power had not been assumed by the County; and
- (c) include the whole or any part of an amount chargeable to it under this section as part of the cost of an urban service within an urban service area established in the local municipality under any general or special Act.

**45.—**(1) When a by-law under subsection 41 (2) is repealed, Repeal of  
by-law

- (a) the local powers assumed by the County revert to the local municipalities and local boards thereof as they exist on the day the by-law is repealed;
- (b) all rights, obligations, assets and liabilities of the County or local board thereof pertaining to the local powers are vested in the local municipalities or local boards thereof;
- (c) financial adjustments, calculated in accordance with such criteria as may be prescribed, shall be made between the County or local board thereof and the local municipalities or local boards thereof; and
- (d) the local municipalities or local boards thereof shall pay to the County or local board thereof on or before the due date all amounts of principal and interest becoming due upon any outstanding debt of

the County or local board thereof in respect of the local powers reverting to the local municipalities or local boards thereof.

Interest

(2) If the local municipalities or local boards thereof fail to make any payment required under clause (1) (d) on or before the due date, the County or local board thereof may charge the local municipalities or local boards thereof interest at the rate of 15 per cent per annum, or such lower rate as the County or local board thereof determines, from the due date until payment is made.

Agreements

(3) If the County or local board thereof had entered into an agreement with any municipality or other person in respect of the local power reverting to the local municipalities or local boards thereof, the local municipalities or local boards thereof are bound by the agreement and the County or local board thereof is relieved of all liability under the agreement.

Disputes

**46.**—(1) If a dispute arises in respect of the financial adjustments or the vesting of assets and liabilities under subsection 42 (1) or clause 45 (1) (b), or the transfer of agreements under subsection 43 (1) or subsection 45 (3), the County, local municipality or local board affected may apply to the Municipal Board for a resolution of the dispute and the Municipal Board shall hear and determine the matter and its decision is final.

R.S.O. 1980,  
c. 347, s. 94  
does not  
apply

(2) Section 94 of the *Ontario Municipal Board Act* does not apply to a decision made under subsection (1).

Regulations

**47.**—(1) The Lieutenant Governor in Council may make regulations,

- (a) providing for the security of employment, the protection of benefits, including seniority and pensions, and early retirement options for employees affected by by-laws passed or repealed under this section;
- (b) prescribing the criteria for determining the amount of and the manner of payment of the financial adjustments under subsections 42 (2) and 45 (1) and for providing which body shall pay and which body shall receive the payments made under those subsections.

Minister's  
order

(2) The Minister may by order prescribe the local powers to which this Part applies.

## PART VIII

## WASTE DISPOSAL

**48.** In this Part, “waste” means garbage, refuse, domestic waste, industrial solid waste or municipal refuse and such other waste as may be designated by by-law of the County Council. Definition

**49.—**(1) On and after the 1st day of January, 1991, the County shall provide facilities for receiving, dumping and disposing of waste and no local municipality or local board thereof shall provide such facilities. County waste facilities

(2) For the purposes of subsection (1), the County Council has the powers conferred by any general or special Act upon the local municipalities and local boards thereof for the receiving, dumping and disposing of waste. County powers

(3) The County Council may, for each local municipality, designate one or more facilities for the receiving, dumping and disposing of waste or any class thereof. Designated facilities

(4) If a designation has been made, a local municipality shall not utilize any facilities except the facilities that have been designated for that local municipality. Idem

**50.—**(1) No facilities for the receiving, dumping and disposing of waste shall be provided in the County by any municipality or other person without the consent of the County Council, which consent may be given upon such terms, including the payment of compensation, as may be agreed upon. Waste disposal, County responsibility

(2) Subsection (1) does not apply to prevent any person or any municipality which does not form part of the County for municipal purposes from providing facilities for the receiving, dumping and disposing of waste if such facilities were being lawfully provided on the 1st day of January, 1991, so long as that facility continues to operate without interruption. Existing facilities

(3) If the County Council refuses its consent under subsection (1) or the applicant and the County Council fail to agree on the terms related to the consent, the applicant may appeal to the Municipal Board which shall hear and determine the matter and may impose such conditions as the Board considers appropriate. Disagreements to O.M.B.

(4) The decision of the Municipal Board is final. Decision final



R.S.O. 1980,  
c. 347, s. 94  
does not  
apply

(5) Section 94 of the *Ontario Municipal Board Act* does not apply to a decision made under subsection (3).

Agreements

**51.** The County Council may enter into agreements with any municipality or other person for establishing, constructing, operating or managing, facilities for the receiving, dumping and disposing of waste.

Adoption of  
certain  
provisions

**52.** Section 42, subsection 43 (1), section 44 and clause 47 (1) (b) apply with necessary modifications to the powers granted to the County under this Part to provide facilities for receiving, dumping and disposing of waste.

Disputes

**53.** If a dispute arises in respect of the financial adjustments or the vesting of assets and liabilities, or the transfer of agreements under this Part, the board of arbitrators established under section 80 has the power to hear and determine the matter.

## PART IX

### COUNTY ROAD SYSTEM

County roads

**54.** On and after the 1st day of January, 1991, all roads under the jurisdiction and control of the County shall continue to form part of the county road system together with,

- (a) the roads that on the 31st day of December, 1990 are under the jurisdiction and control of the Sarnia Suburban Roads Commission;
- (b) the roads within the City prescribed by the Minister; and
- (c) the roads that on the 31st day of December, 1990 are covered by an agreement under section 58 of the *Public Transportation and Highway Improvement Act*.

R.S.O. 1980,  
c. 421

Dissolution  
of roads  
commission

**55.—(1)** The Sarnia Suburban Roads Commission is dissolved on the 1st day of January, 1991 and the assets and liabilities of the commission are transferred to the County on that date.

Transfer of  
benefits,  
liabilities

(2) The County has, in respect of the roads included in the county road system, all the rights, powers and benefits conferred and is subject to all liabilities imposed by statute, by-law, contract or otherwise upon the Sarnia Suburban Roads Commission.



**56.**—(1) Despite subsections 270 (1), (2) and (4) of the *Municipal Act*, the County Council may by by-law assume as a county road any highway within a local municipality.

Assumption  
of highways  
by County  
R.S.O. 1980,  
c. 302

(2) A by-law passed under subsection (1) does not take effect until assented to by the council of the local municipality.

Consent  
required

(3) The County Council may by by-law assume as a county road any highway in a local municipality that connects with a county road.

Connecting  
roads

**57.**—(1) Sections 58 and 59 of the *Public Transportation and Highway Improvement Act* do not apply to the County or the local municipalities.

R.S.O. 1980,  
c. 421, ss.  
58, 59 do  
not apply

(2) All existing agreements between the County and a local municipality under section 58 of the *Public Transportation and Highway Improvement Act* are terminated on the 1st day of January, 1991.

Existing  
agreements  
R.S.O. 1980,  
c. 421

**58.**—(1) Despite subsections 278 (1) and (2) of the *Municipal Act*, a bridge that, on the 31st day of December, 1990, is under the exclusive or joint jurisdiction and control of County Council is on the 1st day of January, 1991 transferred to and vested in the council of the local municipality that has jurisdiction over the highway on which the bridge is situate.

Bridges  
R.S.O. 1980,  
c. 302

(2) Subsection (1) does not apply to bridges,

Limitation

(a) on county roads;

(b) on a boundary line between local municipalities; or

(c) on a county boundary line.

**59.** The Minister may by order prescribe the roads within the City which are county roads.

Minister's  
order

## PART X

### HEALTH AND SOCIAL SERVICES

**60.**—(1) On and after the 1st day of January, 1991, the Lambton Health Unit shall be composed of,

Lambton  
Health Unit

(a) not more than six members appointed from and by the County Council; and

- (b) not more than two persons appointed by the Lieutenant Governor in Council upon the recommendation of the Minister of Health.

County  
responsible  
for expenses  
1983, c. 10

(2) Despite any other Act, the expenses incurred by the Lambton Health Unit in establishing and maintaining the health unit and performing its functions under the *Health Protection and Promotion Act, 1983* or any other Act shall be paid by the County.

County  
responsible  
under  
R.S.O. 1980,  
c. 188

**61.** For the purposes of the *General Welfare Assistance Act*, no local municipality shall be deemed to be a municipality and the County shall have sole responsibility as a County for all matters provided for in that Act.

Homes for  
the aged

**62.**—(1) The homes for the aged known as Twilight Haven, North Lambton and Marshall Gowland, and all assets and liabilities thereof, vest solely in the County on and after the 1st day of January, 1991.

No local  
municipality  
has authority  
under  
R.S.O. 1980,  
c. 203  
Costs

(2) No local municipality has authority to establish, erect or maintain a home for the aged under the *Homes for the Aged and Rest Homes Act*.

R.S.O. 1980,  
c. 302

(3) The costs of operating and maintaining Twilight Haven, North Lambton and Marshall Gowland shall form part of the levy under section 164 of the *Municipal Act*.

1984, c. 55  
does not  
apply to local  
municipality

**63.** No local municipality shall be deemed to be a municipality for the purposes of the *Child and Family Services Act, 1984*.

Information  
to be  
provided to  
County

**64.** Every local municipality and every officer or employee thereof shall, at the request of the officers of the County who are responsible for the administration of the Acts referred to in this Part, furnish to the County officers any information they may require for the purposes of this Act.

## PART XI

### PUBLIC LIBRARIES

County  
library board

**65.**—(1) A county library board for the entire County to be known as "The Lambton County Library Board" is hereby established on the 1st day of January, 1991 and shall be deemed to be a county library board established under Part I of the *Public Libraries Act, 1984*.

1984, c. 57

(2) Subsection 9 (6) of the *Public Libraries Act, 1984* does not apply in the County. 1984, c. 57, s. 9 (6) does not apply

(3) All local municipalities shall be deemed to be participating municipalities for the purposes of subsection 26 (1) of the *Public Libraries Act, 1984*. Apportionment of county levy

(4) All library boards of the County, local municipalities and former municipalities are dissolved on the 1st day of January, 1991 and their assets and liabilities are transferred to the county library board established under subsection (1), without compensation. Transfer of assets, liabilities to county library board

(5) All by-laws, rules, regulations and fees passed or established by the boards dissolved under subsection (4) are continued as by-laws, rules, regulations and fees of the county library board and shall remain in force until the earlier of, Continuation of by-laws, etc.

(a) the date they are amended or repealed by the board; or

(b) the 31st day of December, 1992.

(6) Nothing in this section repeals or authorizes the amendment or repeal of by-laws conferring rights, privileges, franchises, immunities or exemptions that could not have been lawfully repealed by a board dissolved under subsection (4). Certain by-laws continued

**66.** The County shall pay to each local municipality, on or before the due date, all amounts of principal and interest becoming due upon any outstanding debt of each local municipality in respect of public libraries and, if the County fails to pay the amounts before the due date, the local municipality may charge the County interest at the annual rate of 15 per cent, or such lower rate as the local municipality determines, from the due date until payment is made. Debt transferred to County

**67.** Every person who was an employee of a board dissolved under this Part on the 1st day of July, 1990, and continues to be employed until the 31st day of December, 1990, becomes, on the 1st day of January, 1991, an employee of the county library board. Transfer of employees

## PART XII

### FINANCES

**68.** In this Part,

Definitions

R.S.O. 1980,  
c. 31

“average municipal commercial mill rate” means, in respect of a local municipality, the rate obtained by dividing the total of taxes levied for all purposes, other than for school purposes and other than under sections 32 and 33 of the *Assessment Act*, on the commercial assessment for the preceding year by the total commercial assessment for the preceding year and multiplying the result by 1,000;

R.S.O. 1980,  
c. 359

“commercial assessment” means commercial assessment as defined in clause 1 (1) (b) of the *Ontario Unconditional Grants Act*;

“discounted assessment” means, for a local municipality or for a merged area, the sum of,

- (a) the product obtained by multiplying the residential and farm assessment for that local municipality or that merged area by 0.5131, and
- (b) the commercial assessment for that local municipality or that merged area;

“discounted equalized assessment” means, for each local municipality, the sum of the discounted assessment and the equivalent assessment of that local municipality divided by its prescribed equalization factor and multiplied by 100;

“discounted equalized assessment for each merged area” means the discounted assessment of the merged area divided by its prescribed equalization factor and multiplied by 100;

R.S.O. 1980,  
c. 302

“equivalent assessment” means, for a local municipality, that portion of its payments in lieu of taxes in the preceding year, as defined in clause 365 (1) (j) of the *Municipal Act*, not allocated for school purposes, divided by the average municipal commercial mill rate and multiplying the result by 1,000;

“merged area” means the area of the City of Sarnia or the area of the Town of Clearwater;

“net county levy” means the amount required for County purposes under subsection 365 (6) of the *Municipal Act* including the sums required for any board, commission or other body, apportioned to each local municipality by the County;

“net lower tier levy” means the amount required for the purposes of a local municipality under section 164 of the



*Municipal Act* including the sums required for any board, commission or other body, but excluding amounts required to be raised for County and school purposes or for a special rate imposed under section 79; R.S.O. 1980, c. 302

“residential and farm assessment” means residential and farm assessment as defined in clause 7 (1) (e) of the *Ontario Unconditional Grants Act*. R.S.O. 1980, c. 359

**69.**—(1) For purposes of apportioning the net county levy or the net lower tier levy among the respective merged areas, the Minister may, in each year, prescribe the equalization factor to apply for that year to each local municipality within the County and each merged area. Prescribed equalization factor

(2) Despite subsection 365 (6) of the *Municipal Act*, the treasurer of the County shall determine, Annual County apportionment

(a) the discounted equalized assessment of each local municipality in the County;

(b) the discounted equalized assessment of the County; and

(c) the percentage share of apportionment, correct to three decimal places, for each local municipality by dividing the discounted equalized assessment for each local municipality by the discounted equalized assessment of the County and multiplying the result by 100.

**70.**—(1) In each year, the Ministry of Municipal Affairs shall calculate and notify the City of the discounted equalized assessment for each merged area. Annual merged area apportionment

(2) Despite subsection 7 (2) of the *Ontario Unconditional Grants Act*, the net county levy and the net lower tier levy of the City shall be levied against the whole rateable property, including business assessment thereon, of the City and apportioned between the merged areas of the City in the proportion that the discounted equalized assessment for each merged area bears to the total discounted equalized assessment of both merged areas. How levies apportioned R.S.O. 1980, c. 359

(3) The rates to be levied in each merged area of the City shall be determined in accordance with subsection 7 (3) of the *Ontario Unconditional Grants Act*. Determination of rates

**71.**—(1) Despite section 70, the council of the City may by by-law in any year, before the adoption of the estimates for Interim levy



that year, levy in each of the merged areas, on the whole of the assessment for real property, including business assessment in the merged area, according to the last returned assessment roll, a sum not exceeding 50 per cent of that which would be produced by applying to such assessment the total rate for all purposes levied in the merged area in the preceding year on residential real property of public school supporters.

Adjustments (2) The amount of any levy under subsection (1) shall be deducted from the amount of the levy made under subsection 70 (2).

Application of R.S.O. 1980, c. 302, s. 159 (5) (3) Subsection 159 (5) of the *Municipal Act* applies to levies made under subsection (1).

Merged areas under R.S.O. 1980, c. 129 **72.**—(1) For the purposes of levying taxes under Part IV of the *Education Act*, the merged areas shall be deemed to be municipalities, and the council of the City shall be deemed to be the council of each merged area.

Regulations (2) The Lieutenant Governor in Council may each year make regulations providing for the apportionment of the sums required by the Lambton County Board of Education and The Lambton County Roman Catholic Separate School Board with respect to any local municipality or merged area or parts thereof that are wholly or partly within their area of jurisdiction.

Where county-wide assessment R.S.O. 1980, c. 302 **73.** Sections 69, 70, 71 and 72 of this Part and sections 365, 366 and 368 of the *Municipal Act* cease to apply to the County and the local municipalities if the County has been subject to an assessment update under section 368b of the *Municipal Act*.

Direction of Minister of Revenue **74.**—(1) Despite subsections 368b (3) and (3a) of the *Municipal Act*, in 1991, for the purposes of taxation in 1992, the Minister of Revenue shall make a direction under subsection 368b (2) of the *Municipal Act* for changes to be made to the assessment rolls of the local municipalities.

Grants (2) If the Minister is of the opinion that taxes for school purposes in a local municipality may be unduly increased because of changes made to the assessment rolls of local municipalities as a result of a direction under subsection (1), the Minister may make a grant to the local municipality under such terms as the Minister considers necessary in the circumstances.

(3) If, in any year, a local municipality receives a grant under subsection (2), the local municipality shall, in that year, use the grant to reduce the increases in the amounts the local municipality is required to levy for school purposes.

Grant to be used to reduce increases

(4) Nothing in this Part prevents or restricts a local municipality from passing by-laws under section 362 or 363 of the *Municipal Act*.

Certain by-laws not affected  
R.S.O. 1980, c. 302

**75.—**(1) In 1991, the council of the City shall, in the manner prescribed by the Minister, levy on the whole of the assessment for real property and business assessment according to the last returned assessment roll pertaining to the merged area of the Town of Clearwater rates of taxation for general purposes which shall not be increased over the 1990 rates by more than the lesser of,

1991 City rates

(a) 3.5 per cent of the rates of taxation for general purposes in the Town of Clearwater in 1990; and

(b) the rate of inflation for the calendar year of 1990, as determined by the Consumer Price Index published by Statistics Canada.

(2) In 1992, the council of the City shall, in the manner prescribed by the Minister, levy on the whole of the assessment for real property and business assessment according to the last returned assessment roll pertaining to the merged area of the Town of Clearwater rates of taxation for general purposes which shall limit the aggregate levy for general purposes upon the merged area to the lesser of,

1992 City rates

(a) 103.5 per cent of the dollar amount levied for general purposes in the merged area of the Town of Clearwater in 1991; and

(b) 100 per cent plus the rate of inflation for the calendar year of 1991, as determined by the Consumer Price Index published by Statistics Canada, of the dollar amount levied for general purposes in the merged area of the Town of Clearwater in 1991.

(3) In 1993, the council of the City shall, in the manner prescribed by the Minister, levy on the whole of the assessment for real property and business assessment according to the last returned assessment roll pertaining to the merged area of the Town of Clearwater rates of taxation for general purposes which shall not be increased over the 1992 rates by more than the lesser of,

1993 City rates

- (a) 3.5 per cent of the rates of taxation for general purposes in the merged area of the Town of Clearwater in 1992; and
- (b) the rate of inflation for the calendar year of 1992, as determined by the Consumer Price Index published by Statistics Canada.

Rates,  
subsequent  
years

(4) In 1994, 1995, 1996, 1997, 1998, 1999 and 2000, the council of the City shall, in the manner prescribed by the Minister, levy on the whole of the assessment for real property and business assessment according to the last returned assessment roll pertaining to the merged area of the Town of Clearwater rates of taxation for general purposes which are different from the rates which would have been levied for such purposes but for this subsection.

Where taxes  
reduced

(5) If the Minister has made an order under this section which results in a reduction in the taxes which would have otherwise been levied in any year, the amount of the reduction shall be charged to the general funds of the City in that year.

Adjustments  
of grant total

R.S.O. 1980,  
c. 359

**76.**—(1) The Minister may by order on such conditions as the Minister considers appropriate provide for payments to be made to the City so that in each of the years 1991, 1992 and 1993 the total of all grants received by the City under the *Ontario Unconditional Grants Act* pertaining to the merged area of the Town of Clearwater and payments under this subsection is not less than the total of all grants received by the Town of Clearwater under the *Ontario Unconditional Grants Act* in 1990.

Minister's  
order

(2) The Minister may by order before the 1st day of January, 2000, on such conditions as the Minister considers appropriate, make grants or loans to the County and the local municipalities to achieve the purposes of this Act.

Appropri-  
ations

**77.** The money required for the purposes of this Act shall be paid out of the money appropriated therefor by the Legislature.

Adjustments  
of grants  
under  
R.S.O. 1980,  
c. 359

**78.**—(1) A grant under the *Ontario Unconditional Grants Act* to the County or a local municipality in any year in which an incorporation, a major boundary change or a major change in responsibility for the delivery of any service took place during that year shall be revised to reflect the incorporation, the boundary change or the change in the delivery of services.

(2) If, in any year, there is an overpayment or underpayment of grants paid to the County or a local municipality as a result of a revision under subsection (1), the Minister shall adjust any grant paid to the County or a local municipality in the immediately following year by the amount of the overpayment or underpayment.

Adjustment  
of grants by  
Minister

**79.—(1)** In this section,

Definitions

“urban service” means a service of the City not being provided generally throughout the City or not benefiting lands in the City equally, and includes any liability incurred by a former municipality with respect to such service;

“urban service area” means the area or rateable property, including the business assessment thereon, designated in a by-law under clause (2) (c) or in an order under clause (5) (c).

(2) The council of the City may, with the approval of the Municipal Board, by by-law,

By-laws  
respecting  
urban  
services

(a) identify an urban service;

(b) define which costs of the City are related to that urban service;

(c) designate upon what area or rateable property, including the business assessment thereon, of the City the related costs should be raised; and

(d) levy a special rate on that area or rateable property, including the business assessment thereon, to raise the whole or part of the related costs.

(3) The rates to be levied within each urban service area shall be determined in accordance with subsection 7 (3) of the *Ontario Unconditional Grants Act*.

Determi-  
nation of  
rates  
R.S.O. 1980,  
c. 359

(4) The council of the City may establish, amend or dissolve any number of urban service areas designated under subsection (2).

Dissolution  
of urban  
service areas

(5) Before the 1st day of January, 1991, the Minister, upon the joint application of the councils of the City of Sarnia and the Town of Clearwater, may make an order to be effective no earlier than the 1st day of January, 1991, that,

Minister's  
order

(a) identifies an urban service;



(b) defines which costs of the City will relate to that urban service; and

(c) designates upon what area or rateable property, including business assessment thereon, of the City the related costs shall be raised.

Where  
O.M.B.  
approval not  
required

(6) Where an order under subsection (5) creating an urban service area is in force and has not been amended under subsection (7), the council of the City may pass a by-law under clause (2) (d) related to that urban service area without the approval of the Municipal Board.

Amendments  
or repeal of  
order by City

(7) The council of the City may, with the approval of the Municipal Board, by by-law amend or repeal an order under subsection (5).

### PART XIII

#### MISCELLANEOUS

Board of  
arbitrators

**80.**—(1) The Minister shall appoint three persons as a board of arbitrators to make adjustments of assets and liabilities arising from any amalgamation, dissolution, other than the dissolution of a police village, and transfer of functions or services under Parts I, II, V, VIII, IX, X, XI and this Part.

Certain  
provisions of  
R.S.O. 1980,  
c. 25 apply

(2) Sections 3 to 5, 7, 9 to 11 and 13 to 15 of the *Arbitrations Act* and the Schedule to that Act apply to an arbitration under this section.

Decisions of  
board  
binding

(3) The decisions of the board of arbitrators are binding on the County, local municipalities and local boards and are not subject to appeal.

Hearing

(4) The board of arbitrators shall hold a hearing with respect to any matter set out in subsection (1) that is in dispute.

Industrial  
sites  
R.S.O. 1980,  
c. 302

**81.** Paragraph 50 of section 210 of the *Municipal Act* applies with necessary modifications to the County.

By-laws  
respecting  
emergency  
measures

**82.**—(1) If there is a conflict between a by-law passed by County Council under subclause 209 (b) (ii) or (iii) of the *Municipal Act* and a by-law passed by the council of a local municipality under those subclauses, the by-law of County Council prevails to the extent of the conflict.



(2) When a by-law passed by County Council under sub-clause 209 (b) (ii) of the *Municipal Act* is in force, the County may pass by-laws, Idem  
R.S.O. 1980,  
c. 302

- (a) with the consent of the local municipality or local board concerned, for appointing heads of departments and alternates to be members of or advisors to the emergency measures planning committee or any subcommittee thereof;
- (b) with the consent of the local municipality or local board concerned, for training employees of the local municipality or local board in their emergency functions;
- (c) for appointing members of the emergency measures planning committee or of any subcommittee thereof to be in charge of the departments or utilities throughout the County, as provided in the by-law, when an emergency occurs;
- (d) for acquiring alternative headquarters for the County Government outside the County; and
- (e) for obtaining and distributing emergency materials, equipment and supplies.

(3) The County shall be deemed to be a regional municipality and the local municipalities shall be deemed to be area municipalities of that regional municipality for the purposes of the *Emergency Plans Act, 1983*. Deeming  
provision  
respecting  
1983, c. 30

**83.** The County Council, before the 31st day of December, 1992, shall prepare, adopt and forward to the Minister for approval an amendment to the official plan of the County to cover the area of the former municipality of The Corporation of the City of Sarnia. Amendment  
to official  
plan

**84.—(1)** The County Council shall not request an amendment to this Act unless, Double  
majority vote

- (a) a majority of all the votes on County Council are cast in favour of the request; and
- (b) members of County Council representing a majority of the local municipalities cast their votes in favour of the request.

(2) For the purposes of clause (1) (b), subsection 41 (4) Idem applies with necessary modifications.

Regulations  
respecting  
employees

**85.**—(1) The Lieutenant Governor in Council may, upon the recommendation of the Minister, make regulations providing for the security of employment, the protection of benefits, including seniority and pensions, and early retirement options for employees affected by this Act.

Limitation

(2) Subsection (1) does not apply to employees affected by a by-law passed or repealed under Part VII.

Repeal of  
ss. 4 and 18

**86.** Sections 4 and 18 of this Act are repealed on the 1st day of December, 1991.

Repeals

**87.** *The City of Sarnia Act, 1925*, being chapter 103, *The City of Sarnia Act, 1977*, being chapter 101 and the *County of Lambton Act, 1981*, being chapter 92, are repealed on the 1st day of January, 1991.

Commence-  
ment

**88.**—(1) This Act, except sections 5, 6, 7, 13, 19, 20 and 21, Parts IX and X and section 87, comes into force on the day it receives Royal Assent.

Idem

(2) Sections 5 and 13, Parts IX and X and section 87 come into force on the 1st day of January, 1991.

Idem

(3) Sections 6, 7, 19, 20 and 21 come into force on the 1st day of December, 1991.

Transition,  
regular  
elections  
R.S.O. 1980,  
c. 308

(4) Despite subsection (3), the regular elections to be held in 1991 under the *Municipal Elections Act* in the area municipalities shall be conducted as if sections 6, 7 and 19 were in force.

Short title

**89.** The short title of this Act is the *Sarnia-Lambton Act, 1989*.

## SCHEDULE

### WARD 1

Beginning at the intersection of the southerly boundary of the Town of Clearwater and the centre line of the Blackwell Sideroad;

Thence northerly along the centre line of the Blackwell Sideroad and the northerly prolongation thereof to a point distant 500 metres measured northerly from the southerly high water mark of Lake Huron;

Thence easterly and parallel with the southerly high water mark of the said Lake to the easterly boundary of the Town of Clearwater;

Thence southerly along the easterly boundary of the said Town to the south easterly angle of the said Town;

Thence westerly along the southerly boundary of the said Town to the place of beginning.

## WARD 2

Beginning at the intersection of the centre line of the King's Highway No. 402 and the centre line of the Blackwell Sideroad;

Thence northerly along the centre line of Blackwell Sideroad and the northerly prolongation thereof to a point distant 500 metres measured northerly from the southerly high water mark of Lake Huron;

Thence westerly and parallel with the southerly high water mark of the said Lake to the International Boundary between the Province of Ontario and the United States of America;

Thence southerly along the said International Boundary to the northerly boundary of the Village of Point Edward;

Thence easterly and southerly along the northerly and easterly boundaries of the said Village to the centre line of Michigan Avenue;

Thence easterly along the centre line of Michigan Avenue to the centre line of Indian Road North;

Thence southerly along the centre line of Indian Road North to the centre line of the King's Highway No. 402;

Thence easterly along the centre line of the said King's Highway to the place of beginning.

## WARD 3

Beginning at the intersection of the westerly boundary of the City of Sarnia and the centre line of Michigan Avenue;

Thence easterly along the centre line of Michigan Avenue to the centre line of Indian Road North;

Thence southerly along the centre line of Indian Road North to the centre line of the King's Highway No. 402;

Thence easterly along the centre line of the said King's Highway to the centre line of the Blackwell Sideroad;

Thence southerly along the centre line of the Blackwell Sideroad to the northerly limit of Concession V of the former Township of Sarnia;

Thence westerly along the northerly limit of the said Concession to the easterly limit of the King's Highway No. 40;

Thence westerly to and along the centre line of Wellington Street to the centre line of Indian Road South;

Thence northerly along the centre line of Indian Road South to the centre line of London Road;

Thence westerly along the centre line of London Road and the westerly prolongation thereof to the International Boundary between the Province of Ontario and the United States of America;

Thence northerly along the said International Boundary to the southerly boundary of the Village of Point Edward;

Thence easterly and northerly following the boundaries between the Village of Point Edward and the City of Sarnia to the place of beginning.

#### WARD 4

Beginning at the intersection of the southerly boundary of the Town of Clearwater and the centre line of the Blackwell Sideroad;

Thence northerly along the centre line of the Blackwell Sideroad to the northerly limit of Concession V of the former Township of Sarnia;

Thence westerly along the northerly limit of the said Concession to the easterly limit of the King's Highway No. 40;

Thence westerly to and along the centre line of Wellington Street to the centre line of Indian Road South;

Thence northerly along the centre line of Indian Road South to the centre line of London Road;

Thence westerly along the centre line of London Road and the westerly prolongation thereof to the International Boundary between the Province of Ontario and the United States of America;

Thence southerly along the said International Boundary to the southerly boundary of the City of Sarnia;

Thence easterly along the southerly boundary of the City of Sarnia and the Town of Clearwater to the place of beginning.







# Bill 36

## An Act to revise the Public Service Superannuation Act

The Hon. M. Elston  
*Chairman of the Management Board of Cabinet*



*1st Reading*      June 20th, 1989  
*2nd Reading*  
*3rd Reading*  
*Royal Assent*

## EXPLANATORY NOTES

The Bill will continue the existing pension plan established under the *Public Service Superannuation Act* (which contains the basic pension plan) and the *Superannuation Adjustment Benefits Act* (which requires inflation adjustments for benefits payable under the basic plan).

Changes will be made respecting who is eligible to become a member of the plan, the level of contributions required under the plan and certain rules governing pension transfers and the purchase of credit under the plan. Certain provisions of the pension plan (concerning entitlement to benefits and the administration of the plan) will be changed to meet the requirements of the *Pension Benefits Act, 1987*. Additional technical changes are made with respect to the administration of the plan.

Three alternative mechanisms for amending the plan will be provided. Initially, the Lieutenant Governor in Council will be able to amend the plan by order. The Bill will permit the Government to enter into an agreement with the members to establish joint control or member control over the plan. Amendments to the plan will then be made according to the terms of the agreement. Ownership of surplus and responsibility for deficits that may arise under the plan will be concomitant with control over the plan.

A Public Service Pension Board will be created to administer the plan and the pension fund. Custody of the pension fund will be transferred from the Treasurer to the Board. The Treasurer will be responsible for paying any deficit that may exist when the pension fund is transferred to the Board.

The Bill is structured as an Act with two Schedules. The Act contains the particulars of the continuation of the pension plan (sections 3 to 5), the amending mechanisms (section 6), the transfer of the pension fund from the Treasurer to the Board (sections 7 to 11) and transitional provisions (sections 12 to 14). Schedule 1 contains the details of the pension plan (sections 1 to 28) and establishes the Board (sections 29 to 38). Schedule 2 lists the amount of the Treasurer's special monthly payments to liquidate the unfunded liability of the plan as it exists when custody of the pension fund is transferred to the Board.

### *Changes to the pension plan:*

The following are the key changes in the terms of the pension plan:

1. Substantive changes, other than those required by the *Pension Benefits Act, 1987*, include:
  - (a) Contract employees and unclassified part-time employees, who are not eligible to become members of the existing pension plan, have the option of joining the plan. (*Section 2 of Schedule 1*)
  - (b) The rate of a member's required contributions increases by 1 per cent of the member's salary. This increase is matched by an increase in the employer's contributions. (*Section 6 of Schedule 1*)
  - (c) The rules governing the purchase of credit for past service are simplified and the purchase of credit for certain service in the private sector is permitted. (*Section 11 of Schedule 1*)
  - (d) A pensioner who marries after retirement may elect to provide a survivor pension for a spouse, with a corresponding reduction in the amount of the member's pension. (*Section 21 of Schedule 1*)
2. Changes required by the *Pension Benefits Act, 1987* include:

- (a) A person's entitlement to a pension relating to employment after December 31, 1986 vests and his or her contributions are locked in after two years of continuous membership in the plan. (*Section 13 of Schedule 1*)
- (b) The "50 per cent rule" applies, ensuring that a member's contributions under the plan plus interest do not exceed 50 per cent of the commuted value of the pension the member receives for employment since January 1, 1987. (*Section 13 of Schedule 1*)
- (c) The amount of a spouse's survivor pension is increased from 50 per cent to 60 per cent of the member's pension, with a corresponding reduction in the amount of the member's pension. (The member and spouse can waive the increase.) (*Section 19 of Schedule 1*)
- (d) A spouse or beneficiary or the estate of a member entitled to a pension, who dies before beginning to receive it, is entitled to a benefit based on the member's employment after December 31, 1986. (*Section 22 of Schedule 1*)





Bill 36

1989

## An Act to revise the Public Service Superannuation Act

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## Interim payments of unfunded liability

HER MAJESTY, by and with the advice and consent of the Legislative Assembly of the Province of Ontario, enacts as follows:

## Definitions

**1.** In this Act, “actuary”, “Board”, “Crown”, “Fund”, “member”, “Minister”, “pension”, “pension benefit”, “Plan”, “salary” and “Treasurer” have the same meaning as in section 1 of Schedule 1.

## Application

**2.** Subject to subsection 14 (2), this Act applies to every person employed in the service of the Crown after the 31st day of December, 1989.

Plan  
continued  
R.S.O. 1980,  
cc. 419, 490

**3.** The pension plan contained in the provisions of the *Public Service Superannuation Act* and the regulations thereunder, including the benefits provided under the *Superannuation Adjustment Benefits Act* in relation to pensions provided under the *Public Service Superannuation Act*, is continued as the Public Service Pension Plan as revised by this Act and set out in Schedule 1.

Plan  
documents

**4.** The terms of the Plan are those set out in Schedule 1, in this Act and in such other documents concerning the Plan as are created under this Act or Schedule 1.

Public  
Service  
Superan-  
nuation Fund  
continued

**5.—(1)** The Public Service Superannuation Fund established under the *Public Service Superannuation Act* is continued as the Public Service Pension Fund to provide benefits in respect of the Plan.

Board to  
administer

**(2)** The Plan and the Fund shall be administered by the Board in accordance with this Act and the Plan.

Future  
revision of  
Plan

**6.—(1)** The Lieutenant Governor in Council by order may amend the Plan and, without restricting the generality of the foregoing, may,

- (a) determine the methods or assumptions to be used to calculate any pension benefit provided under the Plan;
- (b) rescind the Plan and replace it with another pension plan;
- (c) extend, modify or restrict the conditions upon which persons may become members of the Plan;

- (d) establish a separate pension plan or plans for any class or classes of persons who are members of the Plan, and direct the transfer from the Fund to any fund related to such separately established pension plan or plans of any amount specified to represent the value, as determined by an actuarial valuation, of the pension benefits of persons who will be members of such separately established pension plan or plans;
- (e) increase or prospectively reduce, eliminate or modify any pension benefit set out in the Plan or the rate or amount of contribution to be made under the Plan;
- (f) regulate the administration of the Plan and the composition, duties and powers of the Board;
- (g) exercise with respect to any plan established under this section the powers conferred by this section.

(2) To the extent that an amendment of the Plan made under subsection (1) conflicts with the *Pension Benefits Act, 1987* in a matter in which the conflict is not authorized by this Act or Schedule 1, the amendment is void.

Limitation re  
amendment  
1987, c. 35

(3) If the Crown enters into an agreement for an indefinite term with representatives of a majority of the members with respect to,

Agreement  
for joint  
responsibility

- (a) the joint management of the Plan and the Fund by the Crown and representatives of the members;
- (b) the sharing between the Crown and the members of surpluses and deficiencies in the Fund;
- (c) prior consultation between the Crown and the representatives to determine if agreement can be reached between them concerning any change in benefits under the Plan or in the rate or amount of contributions to the Fund from the Crown or the members; and
- (d) mediation procedures following a failure to agree on a change in benefits under the Plan or in the rate or amount of contributions to the Fund,

the powers mentioned in subsection (1) shall, while the agreement remains in force, be exercised only in accordance with the agreement.

Idem

(4) An agreement mentioned in subsection (3) may also provide that, to the extent specified in the agreement, subsections 11 (2) and (5) cease to apply while the agreement is in force.

Agreement  
for member  
responsibility

(5) If it is agreed between the Crown and representatives of a majority of members that the management of the Plan, the entitlement to surpluses in the Fund and the liability for deficiencies in the Fund will be permanently assumed by the members from time to time of the Plan and that the liability of the Crown to contribute to the Fund will be limited to a specified amount or to a specified percentage of members' contributions or salaries, the Lieutenant Governor in Council may provide by order that the powers mentioned in subsection (1) shall be exercised thereafter only in accordance with the agreement and by the person, persons or entity specified in the agreement.

Application  
of  
R.S.O. 1980,  
c. 446

(6) The *Regulations Act* does not apply with respect to an order amending the Plan.

Transfer of  
SAF Account

**7.—**(1) As of the 31st day of December, 1989, the Treasurer shall transfer to the Public Service Superannuation Fund Account maintained in the Consolidated Revenue Fund under the *Public Service Superannuation Act* the total assets and liabilities of the Public Service Superannuation Fund Account in the Superannuation Adjustment Fund Account maintained in the Consolidated Revenue Fund under the *Superannuation Adjustment Benefits Act*.

Transfer of  
O.P.P.  
Supple-  
mentary  
Benefits  
Account

(2) As of the 31st day of December, 1989, the Treasurer shall transfer to the Public Service Superannuation Fund Account maintained in the Consolidated Revenue Fund under the *Public Service Superannuation Act* the total assets and liabilities of the Ontario Provincial Police Supplementary Benefits Account maintained in the Consolidated Revenue Fund under Order in Council 196/85.

Interest

(3) As of the 31st day of December, 1989, the Treasurer shall pay to the Public Service Superannuation Fund Account maintained in the Consolidated Revenue Fund under the *Public Service Superannuation Act* interest at the rates and on the terms determined by the Lieutenant Governor in Council on the cash balances that from time to time stood to the credit of,

- (a) the Public Service Superannuation Fund Account maintained in the Consolidated Revenue Fund under the *Public Service Superannuation Act*;

R.S.O. 1980,  
c. 419



- (b) the Public Service Superannuation Fund Account in the Superannuation Adjustment Fund Account maintained in the Consolidated Revenue Fund under the *Superannuation Adjustment Benefits Act*; and R.S.O. 1980, c. 490
- (c) the Ontario Provincial Police Supplementary Benefits Account mentioned in subsection (2),

in the period from the 1st day of April, 1989 to the 31st day of December, 1989.

(4) Interest payable by the Treasurer on assets held on the 1st day of April, 1989 in the accounts referred to in clauses (3) (a), (b) and (c) shall be accrued to the 31st day of December, 1989 and paid as of that date to the Public Service Superannuation Fund Account despite a later time for payment specified in any instrument that provides for payment of the interest, and the payment made to the Account reduces the liability of the Treasurer under the instrument for interest by the amount paid. Idem

(5) Payments by the Treasurer made under subsections (3) and (4) shall be made from the Consolidated Revenue Fund. Idem

(6) As of the 1st day of January, 1990, the Treasurer shall transfer to the custody and control of the Board the total amount of the assets on the 31st day of December, 1989 of the Public Service Superannuation Fund Account maintained in the Consolidated Revenue Fund under the *Public Service Superannuation Act*, including assets and payments transferred or made to that account under this section, by issuing to the Board debentures of the Province of Ontario that are equal to the amount of the assets and that, in the opinion of the Treasurer, provide for the payment of principal and interest on terms substantially equivalent to those on which the assets are held on the 31st day of December, 1989. Transfer of PSSF Account R.S.O. 1980, c. 419

(7) All liabilities on the 1st day of January, 1990 of the accounts mentioned in subsections (1), (2) and (6) are liabilities of the Fund on and after that date and, as of that date, the accounts cease to exist in the Consolidated Revenue Fund. Liabilities transferred to Fund

(8) During the period from the 31st day of December, 1989 to the 30th day of June, 1990, the Treasurer may establish outside the Consolidated Revenue Fund an account or accounts for such temporary period as the Treasurer considers advisable to facilitate the orderly transfer to the Board of the assets of the Fund and the administration of the Plan. Temporary account authorized



## Debentures

(9) For the purpose of subsection (6), the Treasurer may, on behalf of Ontario, issue to the Fund debentures of Ontario in such amounts, upon such terms as to the payment of principal and interest, maturing at such time or times and either with or without the privilege of prepayment of the whole or any part of the principal amount of any such debenture as will, in the opinion of the Treasurer, meet the requirements of this section, and any debenture may provide that it is not assignable or transferrable.

Investments  
authorized  
1987, c. 35

(10) Despite the *Pension Benefits Act, 1987* and regulations thereunder, the receipt and holding by the Board of debentures issued under this section shall not be considered imprudent or unreasonable or contrary to that Act and regulations thereunder, and the nature, amount and terms of the debentures may be taken into account by the Board and any committee of the Board in determining future investments of the assets of the Plan.

Application  
of  
1987, c. 35

(11) Section 82 of the *Pension Benefits Act, 1987* does not apply to the transfers described in this section.

Initial  
unfunded  
liability

**8.—(1)** In this section and in sections 9 and 10 and subsection 11 (3),

“actuarial gain” and “actuarial loss” mean, respectively, the sum, if positive, or the sum, if negative, of,

- (a) the gain to the Plan during the period since the review date of the immediately preceding going concern valuation resulting from the difference between actual experience and the experience expected by the actuarial assumptions on which that valuation was based,
- (b) the amount by which the going concern liabilities decrease as a result of an amendment to the Plan, and
- (c) the amount by which the going concern liabilities decrease or the going concern assets increase as a result of a change in actuarial methods or assumptions upon which the current going concern valuation is based, as of the review date for a going concern valuation,

but clause (a), (b) or (c) or any combination thereof shall be counted as a negative in the calculation of the sum if,

- (d) the experience of the Plan results in a loss rather than a gain,
- (e) an amendment increases the going concern liabilities, or
- (f) a change in actuarial methods or assumptions results in an increase in going concern liabilities or a decrease in going concern assets, as the case may be;

“going concern assets” means the value of the assets of the Plan, including accrued and receivable income and the present value of future contributions and investment income, determined on the basis of a going concern valuation;

“going concern liabilities” means the present value of the expenses of the Plan and the accrued and unaccrued benefits of the Plan determined on the basis of a going concern valuation;

“going concern unfunded actuarial liability” means the excess of going concern liabilities over going concern assets;

“going concern valuation” means a valuation of assets and liabilities of the Plan using methods and actuarial assumptions considered by the actuary who valued the Plan to be in accordance with generally accepted actuarial principles and practices for the valuation of a continuing pension plan;

“initial valuation” means the going concern valuation of the Plan as at the 1st day of January, 1990 required by section 10;

“past service unfunded actuarial liability” means the amount of going concern unfunded actuarial liability that results from the provision of benefits with respect to prior employment for which no benefit was provided at the time of the employment or from an amendment to the Plan that provides benefits for employment prior to the date of the amendment if the employment had not previously been recognized for purposes of the provision of pension benefits;

“review date” means the last date of the period under review in a report required under the *Pension Benefits Act, 1987* or regulations thereunder; 1987, c. 35

“solvency assets” means the sum determined in accordance with subsections (2) and (3) of,

- (a) the market value of investments held by the Plan or a value related to the market value by means of an averaging method that stabilizes short-term fluctuations of the market values over a period of not more than five years, plus any cash balances and accrued or receivable income items established before the 1st day of January, 1988,
- (b) the present value of any special payments required to liquidate any past service unfunded actuarial liability established on or after the 1st day of January, 1988,
- (c) the present value of any special payments other than those referred to in clause (b) established on or after the 1st day of January, 1988 that are scheduled for payment within five years after the review date, and
- (d) the present value of future special payments resulting from the initial valuation;

“solvency deficiency” means the excess of the solvency liabilities over the solvency assets;

“solvency gain” means the sum, if positive, of,

- (a) the gain to the Plan during the period since the review date of the immediately preceding valuation of solvency assets and solvency liabilities resulting from the difference between actual experience and the experience expected by the actuarial assumptions on which that valuation was based, and
- (b) the amount by which the solvency liabilities decrease or the solvency assets increase during the period since the review date of the immediately preceding valuation of solvency assets and solvency liabilities as a result of a change in the actuarial methods or assumptions upon which the current valuation of solvency assets and solvency liabilities is based,

but either of clause (a) or (b) shall be counted as a negative in the calculation of the sum if the experience of the Plan results in a loss rather than a gain or if a change in actuarial methods or assumptions results in an increase in solvency liabilities or a decrease in solvency assets, as the case may be;

“solvency liabilities” means an amount that is not less than the liabilities of the Plan determined as if the Plan had been wound up, taking into account liabilities for the adjustment for inflation under the Plan and the requirements of section 75 of the *Pension Benefits Act, 1987*.

1987, c. 35

(2) The present values referred to in clauses (b), (c) and (d) of the definition of “solvency assets” shall be determined on the basis of the assumed interest rate used in determining whether there is a solvency deficiency.

Present values re solvency assets

(3) In calculating the solvency assets, if there is no market value for an investment of the Plan and the investment is issued or guaranteed by a government, the book value of the investment may be used instead of market value.

If no market value

(4) The provisions of this section and of sections 9, 10 and 11 prevail over any conflicting provisions of the *Pension Benefits Act, 1987* or of a regulation made under that Act.

Conflicting provisions

**9.**—(1) For each month in the period commencing with the 1st day of January, 1990 and ending with the last day of the month in which the initial valuation is approved by the Pension Commission of Ontario, the Treasurer shall pay to the Fund from the Consolidated Revenue Fund the amount shown for that month in Schedule 2.

Interim payments of unfunded liability

(2) The Treasurer may, with the appropriate adjustment for interest, at any time prepay one or more of the outstanding payments shown in Schedule 2.

Prepayment

(3) Payments made under subsection (1) or (2) shall be credited against any special payments that are to be made in the same period to liquidate a going concern unfunded actuarial liability disclosed by the initial valuation, and any amount by which the payments made under those subsections are less than the special payments for that period as a result of the initial valuation shall be paid by the Treasurer to the Fund from the Consolidated Revenue Fund within fifteen months following the month when the initial valuation is approved by the Pension Commission of Ontario.

Application of estimated payments

**10.**—(1) As soon as practicable after the 31st day of December, 1989, the Board shall cause to be prepared a going concern valuation of the Plan as at the 1st day of January, 1990, and the valuation shall include the adjustment of pensions for inflation under the Plan.

Initial valuation

(2) The initial valuation shall,

Idem



- (a) comply with this section and section 11;
- (b) be delivered by the actuary to the Board and to the Minister and the Treasurer, and shall be filed with the Pension Commission of Ontario by the Board only after the Minister and the Treasurer have approved in writing the initial valuation; and
- (c) for all purposes of the Plan determine the going concern unfunded actuarial liability or surplus of the Plan as at the 1st day of January, 1990.

Liability  
liquidated

(3) Any going concern unfunded actuarial liability disclosed by the initial valuation shall be liquidated by a series of special payments from the Consolidated Revenue Fund to be made over the forty years commencing on the 1st day of January, 1990.

Calculation  
of special  
payments

(4) Each special payment mentioned in subsection (3) shall be calculated as a constant percentage of the projected future earnings from employment used to calculate pension benefits during the forty years commencing on the 1st day of January, 1990 of all persons who are members of the Plan on that date and of those who are expected to join the Plan during those forty years.

Present value  
of special  
payments

(5) The present value, as at the 1st day of January, 1990, of the full series of special payments shall equal the amount of the going concern unfunded actuarial liability to be liquidated.

Schedule of  
payments

(6) The actuary shall prepare and submit with the initial valuation a schedule showing the dollar amount of each special payment in the first six years of the series and the formula by which the dollar amount of the remaining special payments in the series is determined.

Prepayments  
and  
additional  
payments

(7) The Treasurer may, at any time, prepay a part or all of any outstanding special payments or may make additional payments to the Fund to be applied, with appropriate adjustments for interest, as the Treasurer shall direct to reduce the going concern unfunded actuarial liability disclosed by the initial valuation, and every such payment may be paid out of the Consolidated Revenue Fund.

Consistent  
assumptions

(8) Subject to subsection (4),

- (a) the projected future earnings from employment used to calculate pension benefits shall be determined using actuarial assumptions consistent with those made in the initial valuation;



- (b) the present value of the series of special payments shall be determined using the interest rate used in the initial valuation; and
- (c) all other actuarial assumptions made in the determination of the series of special payments shall be, so far as possible, consistent with actuarial assumptions made in the initial valuation.

**11.—**(1) A going concern valuation of the Plan made after the initial valuation shall include the present value of the outstanding special payments calculated under section 10 that remain to be made to liquidate the going concern unfunded actuarial liability disclosed by the initial valuation, and the actuary shall prepare and submit with the valuation a schedule showing the amount, determined from the formula mentioned in subsection 10 (6), of each remaining special payment for the next six years or for the period of time for which special payments remain to be made, whichever is shorter.

Subsequent  
valuations

(2) Any actuarial gain disclosed by a going concern valuation made after the initial valuation shall be applied in the following order and manner:

Application  
of actuarial  
gain

1. The amount of the gain shall first be applied to reduce, and to eliminate if possible, the payments required to liquidate any unamortized balance of a solvency deficiency disclosed by the initial valuation or a subsequent valuation.
2. When no solvency deficiency remains, the amount of the gain shall be applied to reduce, and to eliminate if possible, a going concern unfunded actuarial liability disclosed by a valuation after the initial valuation.
3. When no other going concern unfunded actuarial liability remains, the amount of the gain shall be applied to reduce, and to eliminate if possible, the unliquidated amount of the going concern unfunded actuarial liability disclosed by the initial valuation.

(3) In determining any solvency gain or solvency deficiency of the Plan, solvency assets shall include the present value of future special payments resulting from the initial valuation.

Special  
payments a  
solvency  
asset

(4) When the special payments made as a result of the initial valuation, the prepayments and additional payments made under subsection 10 (7), and the actuarial gains applied under paragraph 3 of subsection (2) have liquidated the going con-

When special  
payments  
cease

cern unfunded actuarial liability disclosed by the initial valuation, no further special payments shall be made, notwithstanding that the period of forty years used in the initial valuation has not then expired.

Minister to  
approve  
valuation

(5) No valuation of the Plan after the initial valuation shall be filed by the Board with the Pension Commission of Ontario, unless the valuation has been approved in writing by the Minister.

Payment of  
pensions  
under other  
Acts  
R.S.O. 1980,  
cc. 419, 490

**12.** Every allowance, annuity, deferred annuity or other payment under the *Public Service Superannuation Act* or a predecessor Act or under the *Superannuation Adjustment Benefits Act*, including any payment authorized to be made from the Consolidated Revenue Fund, that, before the 1st day of January, 1990, a person is receiving, is entitled to receive, or is entitled to receive with the payment thereof deferred until the year 1990 or later, shall be paid out of the Fund in accordance with the Act under which entitlement to the payment arose.

Expiry of  
appointments

**13.** On the 31st day of December, 1989, the term of appointment of any person under the *Public Service Superannuation Act* as a member of the Public Service Superannuation Board expires.

Continued  
application

**14.—(1)** The *Public Service Superannuation Act*, as it read on the 31st day of December, 1989, continues to apply to the computation or payment of every allowance, annuity, deferred annuity or payment to the payment of which a person has become entitled under that Act prior to that date, and continues to apply in respect of every person who, within the meaning of that Act, has ceased to be a contributor before that date and is entitled to a deferred annuity under that Act.

Exception  
for re-  
employment

(2) A person who is re-employed in the service of the Crown or who becomes a member of the Plan, on or after the 1st day of January, 1990, for a prescribed period of time and in prescribed circumstances, terms or conditions, and who is required by, or entitled under, the Plan to contribute to the Fund in respect of such re-employment, may participate in the Plan to the extent prescribed with respect to the computation or payment of a pension or other payment and subsection (1) does not apply in the circumstances.

Regulations

(3) The Lieutenant Governor in Council may make regulations prescribing a period or periods of time and prescribing circumstances, terms or conditions and the extent of participation in the Plan for the purpose of subsection (2).

**15.** The provisions of the *Superannuation Adjustment Benefits Act* relating to the payment of, or contribution for, adjustment benefits or any other benefit described in that Act in respect of any allowance, annuity, deferred annuity or other payment arising under the *Public Service Superannuation Act* cease to apply on and after the 1st day of January, 1990.

R.S.O. 1980,  
c. 490 ceases  
to apply

R.S.O. 1980,  
c. 419

**16.** The following are repealed on the 1st day of January, 1990:

Repeals

1. The *Public Service Superannuation Act*, being chapter 419 of the Revised Statutes of Ontario, 1980.
2. Item 13 of the Schedule to the *Revised Statutes Amendment Act, 1981*, being chapter 66.
3. The *Public Service Superannuation Amendment Act, 1983*, being chapter 44.
4. Section 3 of the *Provincial Judges and Masters Statute Law Amendment Act, 1983*, being chapter 78.
5. The *Public Service Superannuation Amendment Act, 1984*, being chapter 22.
6. Section 74 of the *Family Law Act, 1986*, being chapter 4.
7. The *Public Service Superannuation Amendment Act, 1986*, being chapter 12.
8. Section 60 of the *Equality Rights Statute Law Amendment Act, 1986*, being chapter 64.

**17.** This Act comes into force on the 31st day of December, 1989.

Commence-  
ment

**18.** The short title of this Act is the *Public Service Pension Act, 1989*.

Short title

## SCHEDULE 1

## PUBLIC SERVICE PENSION PLAN

## Definitions

## 1. In this Schedule,

“actuary” means a Fellow of the Canadian Institute of Actuaries;

“annual salary rate” means the hourly, weekly or other rate at which a person’s salary is paid expressed as an annual salary according to such consistently applied formula as the Board considers appropriate having regard to the hours regularly worked by a full-time employee in the position occupied by the person for whom the annual salary rate is determined or in a comparable position;

“average annual salary” means the average of the member’s annual salary rate in each month of the period of sixty consecutive months of membership in the Plan that produces the highest average, but if the member does not have a period of sixty consecutive months of membership in the Plan, “average annual salary” means the average of the member’s annual salary rate in each month of the member’s longest period of consecutive months of membership in the Plan;

R.S.C. 1985,  
c. C-8

“average year’s maximum pensionable earnings”, with respect to any member, means the average of the Year’s Maximum Pensionable Earnings under the *Canada Pension Plan* for the year in which the member ceases to be a member of the Plan and for each of the two preceding years;

“Board” means the Public Service Pension Board referred to in this Schedule;

1986, c. 4

“child” has the same meaning as in the *Family Law Act, 1986*;

“continuous”, in relation to employment, membership or service, means without regard to periods of temporary suspension of the employment, membership or service, and without regard to periods of lay-off from employment;

“credit”, when used in reference to credit in the Plan, means the total period of time, calculated in years of full-time employment, for which contributions are made to the Fund on behalf of the member or for which a member is employed and for which contributions to the Fund have been made, and where the member’s employment is less than full-time employment, credit shall be given on the basis of the proportion of full-time employment represented by the member’s employment for which contributions are made to the Fund;

“Crown” means the Crown in right of Ontario;

“employer” means the Crown and an agency, board, commission, foundation or organization designated by order of the Lieutenant Governor in Council as an employer for the purpose of the Plan;

“former member” means a person who has ceased to hold a position, office or designation that entitles the person to be a member of the Plan, and who,

(a) is entitled, either immediately or at a future time, to payment of a pension under the Plan, or

(b) is entitled to receive any other payment under the Plan;



“Fund” means the Public Service Pension Fund;

“member” means a person,

- (a) who is required to join the Plan,
- (b) who is designated for the purpose of section 9 of the Plan, or
- (c) who is not required to join the Plan, but is entitled to join the Plan and has elected to do so,

but does not include a former member;

“Minister” means the Chairman of the Management Board of Cabinet;

“pension” means a pension benefit that is being paid to a person under the Plan;

“pension benefit” means the aggregate monthly, annual or other periodic amounts, if any, to which a member will become entitled under the Plan on or after ceasing to be a member or to which any other person will become entitled under the Plan upon the death of a member or former member;

“Plan” means the Public Service Pension Plan set out in this Schedule;

“salary”, in relation to a member, means the amount of money payable to a member and computed by reference to the hours, days, weeks or other specific periods of time for which the member is employed, but does not include overtime pay or any payment to the member in lieu of a benefit provided by the employer or any payment determined by the Board not to be part of a member’s salary;

“spouse” means either of a man and woman who,

- (a) are married to each other, or
- (b) are not married to each other and are living together in a conjugal relationship,
  - (i) continuously for a period of not less than three years, or
  - (ii) in a relationship of some permanence, if they are the natural or adoptive parents, as defined in the *Family Law Act*, 1986, c. 4 1986, of a child;

“Treasurer” means the Treasurer of Ontario and Minister of Economics.

2.—(1) The following persons and classes of persons who have not attained sixty-five years of age are members of the Plan: Plan members

1. Persons who are civil servants within the meaning of the *Public Service Act*. R.S.O. 1980, c. 418
2. Employees of any agency, board, commission, foundation or organization that is established under an Act of the Legislature and that is designated by order of the Lieutenant Governor in Council as one whose employees are required to be members of the Plan.
3. Persons employed in the Office of the Provincial Auditor.



- R.S.O. 1980,  
c. 419
4. Persons required by any Act of the Legislature to be members of this Plan or the pension plan established by the *Public Service Superannuation Act* or a predecessor Act.
5. Any person employed in a capacity or position that is designated by order of the Lieutenant Governor in Council as requiring the employee to be a member of the Plan.
- Elective membership
- (2) Persons to whom subsection (1) does not apply and who are employed,
- R.S.O. 1980,  
c. 418
- (a) by the Crown under the *Public Service Act*;
- (b) by an agency, board, commission, foundation or organization designated by order of the Lieutenant Governor in Council as one whose employees may be members of the Plan; or
- (c) by an agency, board, commission, foundation or organization the permanent and full-time probationary staff of which are by any Act required to be members of the Plan,
- are entitled to be members of the Plan upon filing with the Board a written election to be a member, and after fulfilling any conditions specified in the order mentioned in clause (b).
- Idem
- (3) A person appointed by the Lieutenant Governor in Council to membership on an agency, board, commission, foundation or organization is, when the appointment so permits or the position has been designated by the Lieutenant Governor in Council for the purpose of this subsection, entitled to be a member of the Plan upon filing with the Board a written election to be a member, and after fulfilling any conditions specified in the appointment or designation.
- Termination of membership
3. A member ceases to be a member of the Plan upon termination by death or otherwise of the employment, office or circumstances that required or entitled him or her to be a member of the Plan or upon attaining the maximum age for contributors to a pension fund or plan specified under the provisions of the *Income Tax Act* (Canada) and regulations made thereunder for the registration under that Act of a pension fund or plan.
- R.S.C. 1952,  
c. 148
- Persons not entitled to be members
4. A person is not entitled to be a member of the Plan if the person,
- R.S.C. 1985,  
c. C-8
- (a) is a member of, or a contributor to, a pension plan to which the Crown contributes other than this Plan or the *Canada Pension Plan*; or
- (b) has attained the maximum age for contributors to a pension fund or plan specified under the provisions of the *Income Tax Act* (Canada) and regulations made thereunder for the registration under that Act of a pension fund or plan.
- Contributions to and payments from Fund
- 5.—(1) Subject to section 7, contributions required to be made under this Plan by the Crown or by any member, including interest required to be paid to the Fund, shall be paid into the Fund, and any payment required by the Plan to be made to any person shall be made out of the Fund, and all moneys not required to be paid out shall be invested to meet the obligations and liabilities of the Plan.
- Fiscal year
- (2) The fiscal year of the Plan is the twelve-month period commencing on the 1st day of January in each year.

6.—(1) Subject to subsection (5), every member shall contribute to the Fund from the salary paid to the member for the calendar year, Contributions by members

(a) 8 per cent of the amount of salary that does not exceed the Year's Basic Exemption as prescribed by the *Canada Pension Plan*; R.S.C. 1985, c. C-8

(b) 6.2 per cent of the amount of salary that exceeds the Year's Basic Exemption and does not exceed the Year's Maximum Pensionable Earnings as prescribed by the *Canada Pension Plan*; and

(c) 8 per cent of the amount of salary in excess of the Year's Maximum Pensionable Earnings as prescribed by the *Canada Pension Plan*.

(2) In addition to the contribution required by subsection (1), every member employed in the Ontario Provincial Police Force shall contribute to the Fund an amount equal to 2 per cent of the salary paid to him or her for the calendar year. Additional contribution

(3) The contributions to be made by a member to the Fund shall be deducted from the member's salary by the person who pays the member's salary, and shall be paid to the credit of the Fund within fifteen days from the date the contribution was deducted or within such longer time as the Board authorizes in writing. Deduction of contributions

(4) A member shall be given credit in the Plan for the time in respect of which contributions to the Fund are made by or on behalf of the member. Credit for contributions

(5) A member may cease to contribute to the Fund on or after attaining sixty-five years of age. When no contribution required

(6) Interest calculated as determined by the Board shall be credited to each member in each year of the Plan on the amount of contributions, including interest previously credited to the member, standing to the member's credit in the Fund. Interest

7.—(1) Unless otherwise expressly stated in the Plan, for each month the employer shall pay into the Fund an amount equal to the amount of contributions paid into the Fund by or on behalf of members in that month. Contributions by employer

(2) If the salary of members who are contributing to the Fund is paid by a board, commission, foundation, agency, branch or division that has a special fund or appropriation designated or granted by the Lieutenant Governor in Council or the Assembly for the payment of the employer's contributions under the Plan, contributions required to be made by the employer shall be made from that fund or appropriation in accordance with such formula as may be determined by the Minister for the purpose. Special funds

(3) Any amount in the Fund that is indicated by an actuarial valuation for the purpose of the Plan to be surplus to the requirements of the Plan while it continues in existence may, at the direction of the Minister, be applied to the payment of the contributions to be made by the employer under subsection (1) for so long as there is no going concern unfunded actuarial liability or solvency deficiency, as defined in subsection 8 (1) of this Act, in the Plan. Surplus may reduce employer contributions

(4) Any amount in the Fund that is indicated by an actuarial valuation for the purpose of the Plan to be surplus to the requirements of the Plan while it continues in existence or upon its wind up may, to the extent permitted by the *Pension Benefits Act, 1987*, be withdrawn by the employer from the Fund. Surplus 1987, c. 35

- Deficiency (5) If in any year the amount of cash and assets capable of sale in the Fund is insufficient to meet the payments out of the Fund in the year after the sale of the assets capable of sale, the Treasurer shall pay from the Consolidated Revenue Fund an amount sufficient to make up the deficiency.
- Limitation (6) Subsection (5) ceases to apply if an agreement mentioned in subsection 6 (5) of this Act is in force.
- Unfunded liabilities (7) Subject to this Act, the employer shall pay into the Fund the amount indicated in an actuarial valuation to be required to meet any unfunded liabilities of the Plan.
- Leave of absence with pay 8.—(1) If a member has been granted a leave of absence from employment and continues to receive a part or all of his or her salary during the leave, the member shall make the contributions required by section 6.
- Leave of absence without pay (2) If a member is granted a leave of absence from employment and receives no salary during the leave, no credit shall be given to the member in the Plan for the period of the leave of absence unless the member contributes to the Fund in accordance with section 11.
- Continued membership on release from employment 9.—(1) A member who is released from employment and who is designated by the Lieutenant Governor in Council for the purpose of this section continues to be entitled to contribute to the Fund in accordance with this section until the end of the month in which the member becomes eligible for a pension under section 15, or until the expiration of five years from the member's release from employment, whichever first occurs.
- Contributions (2) Contributions by or on behalf of a member mentioned in subsection (1) shall be made on the basis of the member's annual salary rate immediately before the member was released from employment.
- Long term income protection R.S.O. 1980, c. 418 10.—(1) In this section, "long term income protection plan" means the Long Term Income Protection Plan from time to time applicable to members who are public servants, as defined in the *Public Service Act*, to mitigate the loss of income resulting from a lengthy disability, and includes any plan that applies to members who are not public servants if the Board considers the plan to be substantially similar to the Long Term Income Protection Plan applicable to public servants.
- Contribution on behalf of disabled member (2) If a member qualifies for a benefit under a long term income protection plan as a result of a disability incurred on or after the 1st day of July, 1974, the employer that employed the member on the date when the member qualified for the benefit shall, subject to subsection (6), contribute to the Fund on behalf of the member the amounts set out in subsections (3), (4) and (5) while the member continues to qualify for the benefit.
- Amount (3) Subject to subsection (4), the contributions mentioned in subsection (2) shall be calculated in accordance with section 6 and paid on the annual salary rate of the member immediately before the disability was incurred in respect of which he or she qualifies for a benefit.
- Part-time employment (4) If the member mentioned in subsection (2) was, in the opinion of the Board, employed on a part-time basis in the month before the disability was incurred, the contributions mentioned in subsection (2) shall be calculated in accordance with section 6 and paid only for that part of each month in which the member continues to qualify for the benefit that is equal to the ratio that, in the twelve months ending on the last day of the month immediately preceding the month when the disability was incurred, the member's part-time employment is of full-time employment in the position occupied by the member or in a comparable position.

(5) The annual salary rate on which contributions under this section are based shall be increased in each year following the year in which the member first qualified for a benefit by the same percentage as would be applicable if the annual salary rate of the member immediately before the cessation of employment as a result of disability were increased in each subsequent year during which the member remains entitled to benefits under the Long Term Income Protection Plan in the same manner as an adjusted pension is increased in each year by the adjustment for inflation under section 24.

Increased contribution

(6) Subsections (2), (3), (4) and (5) continue to apply whether or not the member is in receipt of the benefit under the Long Term Income Protection Plan, but those subsections cease to apply when the member ceases to be a member, accrues thirty-five years of credit in the Plan or attains sixty-five years of age, whichever first occurs.

When contributions cease

(7) A person on whose behalf contributions are made under subsection (2) continues to be a member of the Plan and to accrue credit in the Plan for the time in respect of which contributions are made on his or her behalf under this section.

Continued membership

(8) The annual salary rate on which contributions are based under this section shall be included in the computation of the average annual salary of a member on whose behalf contributions are made under this section.

Average annual salary

11.—(1) On such terms and conditions as are fixed by the Board, a member may purchase credit in the Plan,

Prior service with the Crown, etc.

(a) for a period of active service during World War II or the Korean War in His or Her Majesty's naval, army or air forces, in the Canadian or British merchant marine, or in any naval, army or air force that was allied with His or Her Majesty's forces and that is designated by order of the Lieutenant Governor in Council;

(b) for a period of service with the Crown for which the member has no credit in the Plan and no claim for pension benefits from the Plan;

(c) for a period of service with an employer, other than the Crown, that is prior to the member's becoming a member if,

(i) the other employer's plan is or was a pension plan registered under the *Income Tax Act* (Canada), and

R.S.C. 1952, c. 148

(ii) the period for which credit was given in the other plan is reduced by the period for which credit is purchased so that credit in the Plan is not given for any part of the period for which credit is retained in the other plan;

(d) for a leave of absence without pay for more than one month for special or educational purposes; or

(e) for a leave of absence without pay for more than one month because of illness, pregnancy or adoption of a child.

(2) To purchase credit referred to in clause (1) (c), a member shall pay to the Fund the amount determined by the Board on the recommendation of the actuary to be equal to the actuarial value of the benefits to which the member will become entitled on obtaining the credit.

Payment

(3) To purchase the credit referred to in clause (1) (b) or (e), a member shall pay to the Fund an amount equal to the product of,

Idem



(a) the annual salary rate of the member on the date when the member's written application containing all information required by the Board for the purchase of the credit is received by the Board;

(b) the contribution rates determined under subsection 6 (1); and

(c) the length in years of the period of prior service for which credit is purchased.

Idem

(4) To purchase credit referred to in clause (1) (a) or (d), a member shall pay to the Fund an amount equal to the product of,

(a) the annual salary rate of the member on the date when the member's written application containing all information required by the Board for the purchase of the credit is received by the Board;

(b) twice the contribution rates determined under subsection 6 (1); and

(c) the length in years of the period of prior service for which credit is purchased.

Limitation

(5) Any credit referred to in subsection (1) may be purchased only if application therefor is made to the Board in writing within twenty-four months after the latest of,

(a) the day on which the member for whom credit is to be purchased became a member of the Plan;

(b) the last day of the most recent continuous period for which credit is being purchased; and

(c) the 31st day of December, 1989.

Transfer agreements

(6) Despite subsections (2) and (3), where the Minister has entered into a written agreement for the transfer to the Plan of credit for a member's service with an employer to whom the Plan does not extend, the member shall pay or cause to be paid into the Fund the amount provided for in the agreement for the purchase of the credit that is being transferred.

Instalments

(7) If the amount payable by a member to purchase credit under this section exceeds \$500, the amount may be paid in such number of instalments of principal and interest over a period of not more than five years as the Board permits in accordance with terms and conditions established for instalment payments and for the completion of payment on the death or retirement from employment of the member.

Matching payments not required

(8) The employer is not required to pay to the Fund an amount equal to a payment made by any person under subsection (2), (4) or (6).

Contribution, salary and service record

12. The Board shall cause a record to be kept of each member's contributions to the Fund, of the total period of service for which a member has credit in the Plan, and of the annual salary rates of each member while a member and of all other information necessary for the administrative, actuarial and financial requirements of the Plan.

Refunds before twenty-four months membership

13.—(1) A member who has not attained sixty-five years of age and who ceases to be a member of the Plan before completing a continuous period of twenty-four months of membership and with credit in the Plan of less than two years is entitled to the refund provided by either or both of subsections (11) and (12), as the case requires.



- (2) A member who has not attained sixty-five years of age and who ceases to be a member of the Plan after completing a continuous period of twenty-four months of membership or with two or more years of credit in the Plan and before completing ten years of continuous membership and with credit in the Plan for less than ten years is entitled to the refund provided by subsection (11). Refund before ten years membership
- (3) A member who, for reasons other than the member's death or disability, ceases to be a member of the Plan before attaining forty-five years of age and after completing a continuous period of ten or more years of membership or with ten or more years of credit in the Plan is entitled to the refund provided by subsection (11) if the member does not elect a deferred pension in respect of his or her credit in the Plan for service or membership prior to the 1st day of January, 1987. Refund before age forty-five
- (4) A member who has attained sixty-five years of age and who ceases to be a member of the Plan before completing a continuous period of twenty-four months of membership and with credit in the Plan of less than two years is entitled to the refund provided by either or both of subsections (11) and (12), as the case requires, and to the payment provided by subsection (13). Refund after age sixty-five
- (5) A member who has attained sixty-five years of age and who ceases to be a member of the Plan after completing a continuous period of twenty-four months of membership or with two or more years of credit in the Plan and before completing ten years of continuous membership and with credit in the Plan for less than ten years is entitled to the refund provided by subsection (11) and to the payment provided by subsection (13). Idem
- (6) When the cessation of membership referred to in subsection (1), (2), (4) or (5) occurs because of the death of the member, and the member is not survived by a child or children under eighteen years of age or by a spouse from whom the member is not living separate and apart at the member's death, the refund mentioned in those subsections, but not a payment described in subsection (13), shall be paid to the member's estate. Refund on death where no survivor
- (7) If a member dies while a member of the Plan and after completing a continuous period of ten or more years of membership or with ten or more years of credit in the Plan and, if the member is not survived by a child or children under eighteen years of age or by a spouse from whom the member is not living separate and apart at the member's death, the member's estate is entitled to be paid the refund provided by subsection (11). Idem
- (8) Despite subsections (1), (2), (4) and (5), if the cessation of membership referred to in those subsections occurs because of the death of the member, and the member is survived by a child or children under eighteen years of age or by a spouse from whom the member is not living separate and apart, the spouse, or if there is no such spouse surviving, the child or children under eighteen years of age is or are, as the case requires, entitled,
- (a) if the death is a cessation of membership referred to in subsection (1) or (4), to the refund provided by either or both of subsections (11) and (12) and to the payment provided by subsection (13); or
- (b) if the death is a cessation of membership referred to in subsection (2) or (5), to the refund provided by subsection (11) and to the payment provided by subsection (13).
- (9) The amount, if any, by which the total of contributions made to the Fund by or on behalf of a member and the interest credited to the member under subsection 6 (6) exceeds the total payments made from the Fund to the member, to the member's spouse from whom the member is not living Refund when contributions exceed pension

separate and apart at the member's death and to the member's child or children under eighteen years of age at the member's death shall be paid to the member's estate.

Refund for  
disabled  
member

(10) Despite subsections (1), (2), (4) and (5), a member with credit in the Plan for less than ten years and with less than ten years of continuous membership in the Plan who ceases to be a member because of a mental or physical incapacity that is found by the Board to have rendered the member unable to perform his or her duties is entitled to be paid from the Fund the amount, if any, by which,

- (a) the aggregate of such of the amounts mentioned in subsections (11) and (12) as are applicable and of the additional amount mentioned in subsection (13),

exceeds,

- (b) the aggregate of the amount of the commuted value of any pension benefit for which the member is eligible and the amount of any refund to which the member is entitled under subsection (14).

Pre-1987  
service  
refund

(11) A person entitled to a refund provided by this subsection is entitled to be paid from the Fund an amount equal to the total of the contributions made to the Fund by or on behalf of the member in respect of employment or service for any period before the 1st day of January, 1987, together with interest credited to the member under subsection 6 (6).

Post-1986  
service  
refund

(12) A person entitled to a refund provided by this subsection is entitled to be paid from the Fund an amount equal to the total of the contributions made to the Fund by or on behalf of the member in respect of employment or service for any period after the 31st day of December, 1986, together with interest credited to the member under subsection 6 (6).

Additional  
payment

(13) A person entitled to a payment provided by this subsection is entitled to be paid from the Fund an additional amount equal to,

- (a) the amount of a refund to which the person is also entitled under either or both of subsections (11) and (12),

less,

- (b) any portion of the amount of the refund that is attributable to a payment made by the person under subsection 11 (2), (4) or (6) and interest credited to the member in respect thereof.

50 per cent  
rule

(14) The amount by which the total of the contributions, other than contributions made under subsection 11 (2), (4) or (6), made to the Fund by or on behalf of a member in respect of employment or service for any period after the 31st day of December, 1986 and the interest credited to the member under subsection 6 (6) exceeds one-half of the commuted value, excluding credit in the Plan for contributions made under subsection 11 (2), (4) or (6), of the pension or deferred pension in respect of that employment or service to which the member is entitled upon ceasing to be a member shall be refunded to the former member.

Lump sum  
payments

(15) A payment or refund to be made under this section shall be paid in a lump sum payment.

Credit  
reduced

(16) A refund made under this section, other than subsection (14), reduces the member's or former member's credit in the Plan by the period of time in respect of which the refund is calculated.

(17) For the purpose of subsections (6), (7), (8) and (9), a child shall not be deemed to have attained eighteen years of age if the child would not, for the purpose of section 23, be deemed to have attained that age. Interpretation

14.—(1) Every member with ten or more years of credit or with ten or more years of continuous membership in the Plan who is found by the Board to be unable to perform his or her duties by reason of mental or physical incapacity is entitled to a disability pension under this section upon applying therefor to the Board and upon resigning from employment. Disability pension

(2) The Board may at any time review the case of any former member to whom a pension under subsection (1) is paid and, if, in the opinion of the Board, the former member has recovered sufficiently to perform his or her former duties, or to perform other duties in the public service, the Board shall report the case to the Human Resources Secretariat and to the ministry, agency or other organizational unit where the former member was employed immediately before his or her disability, and the former member shall be considered for re-employment. Review by Board

(3) If a former member to whom a pension under this section is paid is offered re-employment after the review referred to in subsection (2), the former member ceases to be entitled to receive payment of any further pension under this section whether or not the offer of re-employment is accepted. Re-employment

(4) The termination of the payment of a pension under this section in accordance with subsection (3) does not affect a former member's right to apply for a pension for which he or she is eligible under any other provision of the Plan. Other pension entitlement not affected

15.—(1) Every member who has twenty-four or more months of continuous membership in the Plan or who has two or more years of credit in the Plan and who ceases to be a member of the Plan on or after attaining sixty-five years of age is entitled to a pension computed in accordance with the Plan, except that, if the member has less than ten years of continuous membership and has credit in the Plan for less than ten years, the pension shall be computed only on his or her credit in the Plan for employment or service after the 31st day of December, 1986. Pension at age sixty-five

(2) Every member who has at least twenty years of credit in the Plan and who ceases to be a member of the Plan on or after attaining sixty years of age is entitled to a pension computed in accordance with the Plan. Pension at age sixty

(3) Every member who has credit in the Plan for a period of time that, when added to the member's age on the date the member ceases to be a member of the Plan, totals at least ninety years is entitled to a pension computed in accordance with the Plan. Ninety-year rule

(4) Every member who has at least thirty years of credit in the Plan, who is a member of the Ontario Provincial Police Force when he or she ceases to be a member of the Plan, and who ceases to be a member of the Plan on or after attaining fifty years of age is entitled to a pension computed in accordance with the Plan. Retirement from O.P.P.

(5) Payment of a pension to which a member is entitled under this section shall commence in the month following the month when the member ceases to be a member of the Plan. Payment

16.—(1) Every member who has twenty-four or more months of continuous membership in the Plan or two or more years of credit in the Plan, who ceases to be a member, and who is neither in receipt of a pension provided for in section 14 nor entitled to a pension provided for in section 15 Deferred pension



is entitled to a pension computed in accordance with the Plan, except that, if the member has less than ten years of continuous membership and has credit in the Plan for less than ten years, the pension shall be computed only on his or her credit in the Plan for employment or service after the 31st day of December, 1986.

Payment of  
pension  
under  
subs. (1)

(2) Payment of the pension provided for in subsection (1) shall commence in the month following the month when the former member will attain sixty-five years of age or, if the former member so elects in writing to the Board, payment of the pension shall, subject to the reductions mentioned in section 17, commence in the month following any month that is not earlier than the month when the former member will attain fifty-five years of age or later than the month when the former member will attain sixty-five years of age.

Pre-1966  
credit

(3) Every member who, on ceasing to be a member, has credit in the Plan that is equal to a period of time commencing before the 1st day of January, 1966 and ending with the day the member ceases to be a member, and who is neither in receipt of a pension provided for in section 14 nor entitled to a pension provided for in section 15, is entitled to a pension computed in accordance with the Plan.

Payment of  
pension  
under  
subs. (3)

(4) Payment of the pension provided for in subsection (3) shall commence in the month following the month when the former member will attain sixty years of age or, if the former member so elects in writing to the Board, payment of the pension shall, subject to the reductions mentioned in section 17, commence in the month following any month that is not earlier than the month when the former member will attain fifty years of age or later than the month when the former member will attain sixty years of age.

Revocation  
of election

(5) An election made under subsection (2) or (4) may, with the approval of the Board, be revoked by the member or former member and a fresh election in writing to the Board may be made if the commencement of payment therein provided for is neither earlier than the month following the month when the fresh election is delivered to the Board nor earlier than is permitted by subsection (2) or (4), whichever is applicable, and is not later than the latest month permitted by subsection (2) or (4), whichever is applicable, but no election may be revoked after payment of the pension is due to commence.

Transfer of  
commuted  
value of  
pension

1987, c. 35

(6) A former member who is entitled to a pension under subsection (1) or (3) and who has not attained fifty-five years of age in the case of a pension mentioned in subsection (1) or has not attained fifty years of age in the case of a pension mentioned in subsection (3) may require the commuted value of the pension to be paid, subject to section 43 of the *Pension Benefits Act, 1987* and to the regulations made under that Act,

- (a) to the pension fund of another pension plan that agrees to accept the payment;
- (b) into a retirement savings arrangement prescribed under the *Pension Benefits Act, 1987*; or
- (c) for the purchase for the former member of a deferred life annuity under which payments will not commence before the former member attains fifty-five years of age, if the pension the commuted value of which is paid is mentioned in subsection (1), or fifty years of age, if the pension the commuted value of which is paid is mentioned in subsection (3), and if the contract to purchase the annuity meets the requirements prescribed under the *Pension Benefits Act, 1987*.

17.—(1) Subject to subsections 15 (1) and 16 (1) and to the other subsections of this section, the annual amount of every pension payable to a former member is 2 per cent of the former member's average annual salary multiplied by the former member's years of credit in the Plan, including any fraction of a year, to a maximum of thirty-five years.

Computation of pension

(2) The annual amount of pension payable to a former member who, on ceasing to be a member, has credit in the Plan that is equal to a period of time commencing before the 1st day of January, 1966 and ending with the day the member ceases to be a member, who has not attained sixty-five years of age, and while the former member is not in receipt of a disability pension under the *Canada Pension Plan* shall be computed in accordance with subsection (1) as though the reference to sixty consecutive months in determining the former member's average annual salary were a reference to thirty-six consecutive months and shall be paid, subject to the reduction required by subsection (5), until the former member attains sixty-five years of age or receives a disability pension under the *Canada Pension Plan*, and upon the occurrence of either of those events, the former member's pension shall be recomputed in accordance with subsection (1) without reference to this subsection.

Pension for pre-1966 credit

R.S.C. 1985, c. C-8

(3) When a former member,

CCP reduction

- (a) who is in receipt of a pension attains sixty-five years of age or receives a disability pension under the *Canada Pension Plan*; or
- (b) who is not in receipt of a pension commences to receive a pension on or after attaining sixty-five years of age,

the annual amount of the pension computed under subsection (1) shall be reduced by the product of,

- (c) 0.7 per cent of the lesser of,
  - (i) the former member's average annual salary, and
  - (ii) the former member's average year's maximum pensionable earnings; and
- (d) the number of years, including any fraction of a year, of the former member's credit in the Plan for service on or after the 1st day of January, 1966 to a maximum of thirty-five years.

(4) The annual amount of every pension provided for in subsection 16 (1) shall, after computation in accordance with subsection (1), be reduced by five-twelfths of 1 per cent thereof for each month in the period commencing with the first day of the month in which payment of the pension is to commence and ending with the last day of the month when the former member will attain sixty-five years of age, and when the reduction required by subsection (3) is calculated, the reduction required by this subsection applies only to the annual amount of pension payable after giving effect to the reduction required by subsection (3) and shall, if applicable, be recalculated on that basis.

Early retirement reduction

(5) The annual amount of every pension provided for in subsection 16 (3) shall, after computation in accordance with subsection (2), be reduced as required by the *Public Service Superannuation Act*, as it read on the 31st day of December, 1965, and the reduction shall continue until the former member attains sixty-five years of age or receives a disability pension under the *Canada Pension Plan* and, upon the occurrence of either of those events, the former member's pension shall be recomputed in accordance with subsection (1) and reduced as required by subsection (3), and the

Idem, pre-1966 credit  
R.S.O. 1980, c. 490



annual amount of pension payable after that reduction shall be further reduced by five-twelfths of 1 per cent thereof for each month in the period commencing with the first day of the month in which payment of the pension commenced and ending with the last day of the month when the former member attained sixty years of age.

Guarantee  
for pre-1966  
credit

(6) If the annual amount of pension computed in accordance with subsection (1),

(a) less the reduction required by subsection (3) and, if applicable, subsection (5); and

(b) plus,

(i) the annual amount of any disability pension to the former member from the *Canada Pension Plan*, or

(ii) the annual amount of pension that the former member would have received from the *Canada Pension Plan* if that pension commenced only on the former member's attaining sixty-five years of age,

other than the part of that pension derived from contributions made to the *Canada Pension Plan* after the former member ceased to be a member of the Plan,

that is payable to a former member who,

(c) has credit in the Plan that is equal to a period of time commencing before the 1st day of January, 1966 and ending with the day the former member ceased to be a member of the Plan; and

(d) has attained sixty-five years of age or is receiving a disability pension under the *Canada Pension Plan*,

R.S.O. 1980,  
c. 490

is less than the annuity or annual amount of allowance that would be payable to the former member under the *Public Service Superannuation Act*, as it read on the 31st day of December, 1965, in respect of the former member's credit in the Plan, the amount of the difference shall be added to the annual amount of the pension computed in accordance with subsection (1) that is payable after making the reductions required by subsection (3) and, if applicable, subsection (5).

Reduction  
for survivor  
pension

(7) If, on the first day of the month when payment of the pension to a former member is to commence, the former member has a spouse from whom the former member is not living separate and apart, the annual amount of the former member's pension computed in accordance with this section, other than this subsection, shall be reduced in such manner as the Board approves to reflect the following rules:

1. Determine the present value of the pension payable to the former member and the spouse on the assumption that a survivor pension is payable to the spouse equal to one-half of the former member's pension computed in accordance with this section, other than this subsection, that the survivor pension is payable for the lifetime of the surviving spouse, and that, if the spouse was not the spouse of the former member when the former member ceased to be a member of the Plan, no survivor pension is payable to the spouse.
2. Determine the reduction in the amount of the former member's annual amount of pension computed in accordance with this section, other than this subsection, that is required in order to provide to the

spouse of the former member, at the present value determined under paragraph 1, the survivor pension provided by subsection 19 (1).

3. Reduce the annual amount of the former member's pension computed in accordance with this section, other than this subsection, by the amount of the reduction determined under paragraph 2.

(8) If a computation under this section involves a part of a year, the part shall be determined on the basis of full months, and, Computation of partial year

- (a) any part of a month that is less than fifteen days shall be disregarded; and
- (b) any part of a month that is fifteen days or more shall be deemed to be a month.

18.—(1) The Board is not required to commence payment of a pension to which a person is entitled under the Plan until a written application is delivered to the Board setting out such information as is prescribed and such information as is, in the opinion of the Board, necessary to establish the person's entitlement to the pension and the amount thereof. Application for pension

(2) Unless otherwise expressly provided in this Plan, a pension, Payment

- (a) is payable in monthly instalments for life; and
- (b) ceases to be payable after the month when the person in receipt of the pension dies or entitlement to payment of the pension ceases.

(3) If a person is entitled to be paid a pension the annual amount of which, before the reductions mentioned in subsections 17 (4) and (5), is not more than, Commutation of pension

- (a) 2 per cent of the Year's Maximum Pensionable Earnings as prescribed by the *Canada Pension Plan*; or R.S.C. 1985, c. C-8
- (b) such greater amount as is permitted by the *Pension Benefits Act*, 1987, 1987, c. 35

in the year when the member for whose credit in the Plan the pension is payable ceased to be a member of the Plan, the Board may pay the commuted value of the pension to the person.

19.—(1) Subject to subsections (2) and (3), if, on the first day of the month in which payment of a pension to a former member is to commence, the former member has a spouse from whom the former member is not living separate and apart, the spouse is, if he or she survives the death of the former member, entitled to be paid for his or her lifetime an annual amount of pension equal to 60 per cent of the annual amount of pension that the former member is entitled to receive in the month when the former member dies, and payment thereof shall commence in the month following the month when the former member dies. Pension to surviving spouse

(2) If a survivor pension under subsection (1) is payable as the result of the death of a former member before attaining sixty-five years of age and before the reduction of his or her pension in accordance with subsection 17 (3), the annual amount of pension on which the survivor pension is based shall be reduced in accordance with that subsection as though the former member had attained sixty-five years of age immediately before his or her death. Death before age sixty-five

Waiver of  
survivor  
pension

(3) Despite subsection (1), a member or former member and the spouse of the member or former member from whom the member or former member is not living separate and apart,

(a) may elect that the spouse receive a survivor pension under subsection (1) of 50 per cent rather than 60 per cent if the member or former member and the spouse are not or were not living separate and apart when the member or former member ceases or ceased to be a member of the Plan; or

(b) may waive the spouse's entitlement to a survivor pension under subsection (1) if the member or former member and the spouse are or were living separate and apart when the member or former member ceases or ceased to be a member of the Plan,

by delivering to the Board within twelve months prior to the month when payment of the pension to the member or former member is to commence a written direction in the form approved by the Board and signed by both of them or a certified copy of a domestic contract, within the meaning of Part IV of the *Family Law Act, 1986*, containing the election or waiver.

1986, c. 4

Revocation  
of waiver or  
election

(4) Persons who have delivered a waiver or election under subsection (3) may jointly cancel the waiver or election by written notice of cancellation signed by them and delivered to the Board before the month when the pension is to commence to be paid to the member or former member.

Reduction  
not to be  
made

(5) The reduction required by subsection 17 (7) shall not be made if an election or waiver made as permitted by subsection (3) is in force in the month when the pension is to commence to be paid to the member or former member.

Survivor  
pension to  
child on  
death of  
spouse

(6) On the death of a spouse to whom a survivor pension is paid under this section, section 20 or 23, an annual amount of pension equal to that survivor pension is payable to or among such of the child or children of the former member on whose death the survivor pension became payable to the spouse as are, at the death of the spouse, under eighteen years of age until each child attains that age or dies under that age, and the share of the children who attain that age or die under that age accrues to the child or children, if any, remaining under that age.

Increased  
survivor  
pension

20.—(1) The amount of the survivor pension payable under section 19 may be increased to 65 per cent, 70 per cent or 75 per cent of the pension of the former member, after taking into account the reduction required by subsection (4), by a written direction signed by the member or former member on whose pension the survivor pension is based specifying the percentage to which the survivor pension is to be increased, and the direction shall be delivered to the Board at least two years prior to the month when payment of the pension to the member or former member is to commence.

Idem

(2) The Board shall accept a direction mentioned in subsection (1) that is delivered to the Board after the time mentioned in that subsection and before the month when the pension is to commence to be paid to the member or former member if the Board is satisfied that the member or former member is in good health having regard to his or her age.

When  
direction not  
valid

(3) A direction delivered in accordance with subsection (1) or accepted in accordance with subsection (2) is of no effect if the member who gives it dies while a member of the Plan.

Actuarial  
reduction of  
pension

(4) The annual amount of pension computed in accordance with section 17 payable to a former member who has given a valid direction delivered in accordance with subsection (1) or accepted in accordance with subsection



(2) shall be actuarially reduced in a manner approved by the Board to reflect the increased survivor pension specified in the direction and the increased survivor pension shall be paid in lieu of that provided for in section 19.

(5) A person who gives a direction mentioned in subsection (1) or (2) may revoke the direction by a written revocation delivered to the Board before the month when payment of the person's pension is to commence. Revocation of direction

**21.—**(1) A former member who, after commencing to receive a pension and when the former member has no spouse entitled to a survivor pension under section 19, becomes the spouse of a person who would not be entitled on the death of the former member to a survivor pension under section 19 may in writing direct the Board to pay to the person, if he or she survives the death of the former member, a survivor pension for life of 50 per cent, 55 per cent, 60 per cent, 65 per cent, 70 per cent or 75 per cent of the pension received by the former member immediately before his or her death. Post-retirement marriage

(2) A direction mentioned in subsection (1) must be delivered to the Board, Time limit

(a) within ninety days after the date on which the former member became the spouse of the person to whom the survivor pension is directed to be paid; or

(b) if immediately before the person becomes the spouse of the former member there is a child of the former member who would be entitled on the former member's death to receive a pension, within ninety days after the date the child ceases to be entitled to receive the pension.

(3) The Board may accept a direction mentioned in subsection (1) and delivered after the time mentioned in subsection (2) if the Board is satisfied that the former member giving the direction is in good health having regard to his or her age. Exception

(4) The annual amount of pension payable to a former member who has given a valid direction in accordance with this section shall be actuarially reduced in a manner approved by the Board to reflect the survivor pension directed to be paid and, subject to subsection (5), the survivor pension shall be paid in the percentage specified in the direction to the spouse if he or she survives the death of the former member. Actuarial reduction of pension

(5) A survivor pension under this section shall not be paid while there is a child of the deceased former member entitled to receive a pension as a result of the death of the former member. Prior interest of child

**22.—**(1) If a member who has twenty-four or more months of continuous membership or two or more years of credit in the Plan, Survivor pension on death before payment of pension

(a) dies while a member of the Plan; or

(b) dies after ceasing to be a member of the Plan and before the beginning of the month when payment of his or her pension is to commence,

the commuted value, as determined by the Board, of the member's or former member's pension benefit determined immediately prior to his or her death and on the basis only of his or her credit in the Plan for employment or service after 1986 is payable,

- (c) to the spouse of the member or former member from whom the member or former member is not living separate and apart;
- (d) if no payment under clause (c) can be made, or if the member or former member has no spouse who survives the date of death of the member or former member, to the beneficiary designated in accordance with this section by the member or former member; or
- (e) if no payment can be made under clause (c) or (d), to the estate of the member or former member.

Payment to spouse

(2) Subject to subsection (3), the commuted value payable under subsection (1) to the spouse of a member or former member shall be paid in the form of an immediate pension for the lifetime of the spouse, and the commuted value of the pension so payable shall be equal to the commuted value payable under subsection (1), and payment thereof shall commence in the month following the month when the member or former member dies.

Election by spouse

(3) The spouse to whom an immediate pension is payable under subsection (2) may, in writing in the approved form delivered to the Board in the time fixed by the Board, elect to receive the commuted value payable under subsection (1) in the form of,

- (a) a single lump sum payment equal to the commuted value payable under subsection (1); or
- (b) a deferred pension the commuted value of which is equal to the commuted value payable under subsection (1).

Waiver of spouse's entitlement

(4) A member or former member and his or her spouse may, by written waiver in the approved form delivered to the Board in the time fixed by the Board, waive the spouse's entitlement under subsection (1) and, while the waiver is in effect, that subsection shall be applied as if the member or former member does not have a spouse on the date of the death of the member or former member.

Designation of beneficiary

(5) The designation of a beneficiary for the purpose of this section shall be made and delivered to the Board in such form and manner as the Board requires.

Survivor pension for pre-1987 credit

23.—(1) If a member who has ten or more years of credit in the Plan or has ten or more years of continuous membership in the Plan dies while a member of the Plan, or dies after ceasing to be a member of the Plan and before the beginning of the month when payment of his or her pension is to commence, an annual amount of pension equal to one-half of the member's or former member's pension computed in accordance with section 17 as though the member or former member had attained sixty-five years of age and on the basis only of his or her credit in the Plan for employment or service before 1987 is payable,

- (a) to the spouse of the member or former member from whom the member or former member, at his or her death and at the cessation of his or her membership in the Plan, was not living separate and apart; or
- (b) if no payment under clause (a) can be made, to or among such of the child or children of the member or former member as are, at the death of the member or former member, under eighteen years of age until each child attains that age or dies under that age, and the share of each of the children who attains that age or dies under that age accrues to the child or children, if any, remaining under that age.



(2) Payment of a survivor pension under this section shall commence in the month following the month when the member or former member dies, and the survivor pension payable to a spouse under this section is payable for the life of the spouse. Payment

(3) For the purpose of this section and subsection 19 (6), a child who has attained eighteen years of age shall be deemed not to have attained that age if, since attaining that age, the child has been, in the opinion of the Board, continuously in full-time attendance at either or both of, Exception for higher education

(a) a secondary school; or

(b) for five years following secondary school, a post-secondary educational institution that is recognized as such by the Board.

**24.—(1)** In the formulas in this section,

Inflation adjustment

“A” is the carry forward determined for the immediately preceding year,

“B” is the basic ratio for the year,

“C” is the adjustment ratio for the year,

“D” is the basic ratio for the year next following the year when the member for whose credit in the Plan the pension in respect of which the formula is applied is payable ceased to be a member of the Plan, and shall be calculated to a maximum of 1.080 or to a minimum of 1.000, and

“E” is the number of full months in the year that are after the month in the year when the member for whose credit in the Plan the pension in respect of which the formula is applied is payable ceased to be a member of the Plan.

(2) In this section,

Definitions

“accumulated adjustment ratio”, for the pension of a person, means the product of the multiplication of all adjustment ratios for the years in the period commencing with the year when the member for whose credit in the Plan the pension is payable ceased to be a member of the Plan and ending with the year for which the accumulated adjustment ratio is being determined;

“adjustment ratio”, for the pension of a person, means,

(a) for any year before the year 1976 and for the year when the member for whose credit in the Plan the pension is payable ceased to be a member of the Plan, 1.000,

(b) if the member for whose credit in the Plan the pension is payable ceased to be a member of the Plan in or after the year 1975, for the year next following the year when the member for whose credit in the Plan the pension is payable ceased to be a member of the Plan, the ratio determined by the formula

“ $[(D - 1.000) \times E / 12] + 1.000$ ”, and

(c) for the later of the year 1976 and the second year after the year when the member for whose credit in the Plan the pension is payable ceased to be a member of the Plan and for any subsequent year, the

ratio determined by the formula " $A + B$ " calculated to a maximum of 1.080 or to a minimum of 1.000;

"basic ratio", for a year, means the ratio expressed to three decimal places that the average for the Consumer Price Index over the last twelve months of the twenty-four-month period ending with the 30th day of September in the immediately preceding year bears to the average for the Consumer Price Index over the first twelve months of that period;

"carry forward", with respect to the pension of a person, means,

- (a) for any year before the year 1976, for the year when the member for whose credit in the Plan the pension is payable ceased to be a member of the Plan and for the year next following that year, nil, and
- (b) for the later of the year 1976 and the second year following the year when the member for whose credit in the Plan the pension is payable ceased to be a member of the Plan and for any subsequent year, the positive or negative number determined by the formula " $A + B - C$ ";

R.S.C. 1985, c. S-19 "Consumer Price Index" means the Consumer Price Index for Canada as published by Statistics Canada under the authority of the *Statistics Act* (Canada);

R.S.O. 1980, c. 419 "member" includes a contributor within the meaning of the *Public Service Superannuation Act* or a predecessor Act;

"pension" means a pension to which a person is entitled from the Plan other than the adjustment for inflation provided by this section, and an allowance, annuity, deferred annuity or other periodic payments to which a person has become entitled under the *Public Service Superannuation Act* or a predecessor Act;

"Plan" includes the pension plan established under the *Public Service Superannuation Act* and any predecessor Act.

Payment of  
inflation  
adjustment

(3) The annual amount of pension payable to a person from the Fund shall, commencing with the year when payment of the pension is to commence and in each subsequent year that the pension continues to be payable, be adjusted for inflation by multiplying the annual amount of the pension by the accumulated adjustment ratio for the pension of the person for that year, and the amount by which the pension thus adjusted exceeds the annual amount of pension before the adjustment in each year shall be paid to the person entitled to receive the pension for which it is calculated at the same times, in the same manner and subject to the same terms and conditions as apply to the pension in respect of which it is paid.

Ratio not to  
apply  
R.S.O. 1980,  
c. 490

(4) The ratio determined for the year 1990 under the *Superannuation Adjustment Benefits Act* does not apply to a pension to which this section applies.

Pre-  
retirement  
part-time  
employment

25.—(1) A full-time employee who is permitted to continue the duties of his or her position as a part-time employee in accordance with this section for the final years of his or her employment in the public service is entitled to have his or her pension determined in accordance with this section if the employee meets all of the conditions set out in subsection (2) and gives the notice of election required by subsection (3).

Conditions

(2) The conditions referred to in subsection (1) are,

(a) that the employee's part-time employment must be and continue to be,

(i) in a position that requires regular employment for at least fourteen hours per week or nine full days in each four weeks, or

(ii) full-time employment in a classified position in the civil service for at least one-third of each twelve-month period or part thereof following the giving of the notice required by subsection (3) and before the employee's retirement on the date provided for in the notice;

(b) that the employee must not be employed as a regular full-time employee in the public service at any time after giving the notice required by subsection (3) and before receiving a pension under the Plan;

(c) that during the period of part-time employment specified by the employee in the notice given in accordance with subsection (3), contributions are made to the Fund by the employee and the employer on the basis of the salary payable for full-time employment in the position held by the employee immediately before the giving of the notice; and

(d) that the employee's deputy minister must approve in writing the change from full-time to part-time employment proposed by the employee.

(3) A full-time employee who wishes to contribute to the Fund on the basis provided for in this section shall give to his or her deputy minister a written notice signed by the employee stating, Notice

(a) that the employee intends to retire from employment in the public service not later than five years after the day on which the notice is given;

(b) that the employee wishes to perform the duties of his or her position on a part-time basis until retirement from employment; and

(c) that the employee wishes to continue to contribute to the Fund on the basis of his or her salary as a full-time employee in the position.

(4) Despite the definition of "annual salary rate" and "credit", while an employee continues to comply with the conditions described in subsection (2), Pension on basis of full-time employment

(a) contributions shall be made to the Fund by the employee and the employer on the basis of the salary payable for full-time employment in the position held by the employee immediately before the giving of the notice;

(b) the employee's annual salary rate shall be that on which contributions to the Fund are paid; and

(c) the employee shall be given credit in the Plan on the basis of full-time employment in the position in which the employee is employed part-time.

(5) If an employee who contributes to the Fund in accordance with this section resumes full-time employment in the public service after giving the notice required by subsection (3) and before receiving his or her pension, Resuming full-time employment

the employee's contributions to the Fund and credit in the Plan shall be recomputed without reference to subsection (4).

Excess  
contributions  
refunded

(6) Contributions to the Fund under this section in excess of those required after the application of subsection (5) shall be refunded to the person who paid them.

Interpretation  
R.S.O. 1980,  
c. 418

(7) In this section, "public service" has the same meaning as in the *Public Service Act*.

Re-  
employment  
of pensioner

26.—(1) If a former member who is receiving a pension is, in the opinion of the Board, re-employed or engaged in any capacity in the service of the Crown, any pension that the former member is entitled to receive during the re-employment or engagement shall, for any period of three months commencing on the 1st day of January, April, July or October in any year during which the former member is so re-employed or engaged, be reduced by the amount by which the sum of,

(a) three times the monthly salary paid to the former member in that period of three months; and

(b) the pension payable to the former member in that period of three months if this section were not applicable to the former member,

exceeds the product of three times the monthly salary payable to the former member for the last full month of employment before he or she ceased to be a member of the Plan.

Idem

(2) Any period of re-employment or engagement referred to in subsection (1) for which a person may and does contribute to the Fund shall be added to the person's credit in the Plan, and any pension payable on termination of the re-employment or engagement shall be recalculated to take into account the additional credit and any pension earlier received by the person.

Re-  
employment  
in expert  
capacity

(3) Despite subsection (1), the pension of a person who is appointed by the Lieutenant Governor in Council for a period not exceeding six months at a time to provide to the Crown the professional, expert or technical knowledge of the person in a special capacity required by the Crown shall not be reduced if the appointment so provides.

Void  
transactions

27.—(1) Every transaction that purports to assign, charge, anticipate or give as security the interest, or any part thereof, of any person in the Fund or in any pension or other sum payable out of the Fund is void.

Exemption  
from seizure

(2) The interest of any person in the Fund or in any pension or other sum payable out of the Fund is exempt from execution, seizure or attachment.

Order or  
separation  
1987, c. 35  
1986, c. 4

(3) Subject to section 52 of the *Pension Benefits Act, 1987*, subsections (1) and (2) do not apply to prevent the operation of any order under the *Family Law Act, 1986* or the provisions of a domestic contract, as defined in Part IV of that Act.

Order for  
support or  
maintenance

(4) Subsections (1) and (2) do not apply to prevent execution, seizure or attachment in satisfaction of an order for support or maintenance enforceable in Ontario to a maximum of one-half of the interest of any person in the Fund or in any pension or other sum payable out of the Fund.

Application  
of subs. (4)

(5) Subsection (4) applies to orders of support or maintenance enforceable in Ontario whether made before or after the 31st day of December, 1989.



(6) Despite subsections (1) and (2), if a person entitled to a refund or a lump-sum payment from the Fund requests the Board in writing to have the refund or payment paid, Payment into other funds

(a) into another registered pension plan;

(b) into a registered retirement savings plan that meets the requirements of the *Income Tax Act* (Canada);

R.S.C. 1952,  
c. 148

(c) to an insurance company to purchase an immediate or deferred life annuity; or

(d) into a pension plan approved by the Board,

the refund or payment shall be so paid.

**28.**—(1) A payment to be made under the Plan to a member's estate may be made to the executor or administrator of the member's estate or to the person or persons who appear to the Board to be properly acting in the administration or distribution of the member's estate or, if no executor or administrator or other person acting in the administration or distribution of the member's estate can be ascertained to the satisfaction of the Board, the payment may be paid into the Supreme Court of Ontario to the credit of the member's estate.

Payment to estate

(2) If, after the death of a person, no spouse or child or designated beneficiary of that person can be found entitled to receive a pension on the person's death, and the Board is satisfied that reasonable inquiries have been made to find the spouse or child or designated beneficiary, and more than one year has passed since the death of the person, the Board may, despite any other provision of the Plan, direct that the money that would be payable under the Plan to the person's estate if the person had died leaving no surviving child or spouse or designated beneficiary entitled to be paid a pension on the person's death be paid to the person's estate upon such terms and conditions as the Board determines.

Missing beneficiary

(3) If the spouse or child or designated beneficiary referred to in subsection (2) is subsequently found and a claim is made for any money payable under the Plan, the Board may direct that such money, less any money paid under subsection (2), be paid to the spouse or child or designated beneficiary, as the case may be.

Beneficiary later found

**29.**—(1) The Public Service Superannuation Board is continued under the name of the Public Service Pension Board and the Board is constituted a corporation without share capital.

Board to be corporation

(2) The *Corporations Act* does not apply to the Board.

Application of  
R.S.O. 1980,  
c. 95

(3) The Board shall be composed of at least three members, and the members shall be appointed by the Lieutenant Governor in Council for such term, not exceeding three years on each appointment or reappointment, as is specified in the appointment or reappointment.

Board members

(4) If the Lieutenant Governor in Council considers it appropriate and desirable, members may be appointed to the Board because of their expertise in the management, investment or administration of pension plans or in order to represent on the Board, subject to the requirements of the *Pension Benefits Act*, 1987, the concerns of the Crown, of members required to contribute to the Fund or of persons receiving pensions under the Plan.

Idem

1987, c. 35



- Reappointment (5) A member whose appointment has expired may be reappointed to the Board, but no reappointment shall be for a term that, when added to the member's current unbroken period of membership, exceeds six consecutive years of membership.
- Chairperson and vice-chairperson (6) From the members of the Board, the Lieutenant Governor in Council may designate a chairperson and one or more vice-chairpersons for a term not to exceed two years or such lesser period as the person remains a member of the Board and, if the Lieutenant Governor in Council does not designate a chairperson or vice-chairperson within one month after the position becomes vacant, the members of the Board shall elect one of them to be chairperson, and may elect one or more of them to be vice-chairperson, but the term for which any chairperson or vice-chairperson is elected shall not exceed two years or the remaining period of his or her appointment to the Board, whichever is shorter.
- Remuneration 30. The Lieutenant Governor in Council shall establish the remuneration or range of remuneration to be paid to a member of the Board and to the chairperson and vice-chairperson, but no member of the Board who is employed in the public service of Ontario shall be paid any remuneration other than reimbursement for expenses actually incurred in the performance of his or her duties as a member of the Board or an honorarium in recognition of salary lost by the public servant for attendance at a meeting of the Board.
- Duty of Board 31.—(1) It is the duty and responsibility of the Board to administer the Plan and manage the Fund in accordance with this Act, the Plan and the *Pension Benefits Act, 1987*, c. 35
- Employment of officers and others (2) The Board shall appoint or employ an actuary, an auditor and such officers, employees, advisers, experts and other persons as are required to carry out the duties and responsibilities of the Board.
- Board may make rules (3) The Board may make rules and by-laws for the administration and management of the Plan and the Fund and for the conduct of the affairs of the Board and committees of the Board, and may, for such period as the Board determines and on such terms and conditions as the Board considers appropriate, assign or delegate to any officer, employee, member or committee of the Board or other person retained by the Board the performance or exercise of any of the duties or responsibilities of the Board as the Board considers necessary or desirable.
- Idem (4) Without restricting the generality of subsection (3), the Board may make rules,
- (a) prescribing the proofs to be furnished as a condition to the payment of a pension;
  - (b) excluding from salary on which contributions to the Fund are based any payment to a member that is, in the opinion of the Board, not a regular and usual part of the normal remuneration for the member's employment or is a payment in the nature of a special consideration or employee benefit;
  - (c) approving forms and providing for their use; and
  - (d) requiring members of the Plan, recipients of pensions under the Plan or applicants for pensions under the Plan to furnish information to or for the use of the Board, and prescribing the form thereof and the information to be furnished.

32. The Board has and may exercise all of the powers and capacities of a natural person that are considered by the Board to be necessary or incidental to the carrying out of its duties and responsibilities under this Act and the Plan and, in particular, the Board may,

Powers of Board

- (a) contract and be contracted with and sue and be sued;
- (b) acquire by purchase, lease or otherwise any real or personal property for its own use or as an investment of the Fund, and may sell, lease or otherwise dispose of all or any part of its property in its discretion;
- (c) participate with others as a partner or as a member of a syndicate or association of persons in the acquisition, holding, management or disposition of any property by way of investment or otherwise;
- (d) determine the rate of remuneration and the employee benefits and perquisites for its employees and the conditions of employment under which they are employed;
- (e) with the approval of the Management Board of Cabinet, enter into such arrangements as are considered necessary by the Board for the purchase from the Crown of the services of any employee or ministry of the Crown, or for the use of any facilities or equipment belonging to the Crown, that may assist the Board in the management or administration of the Plan or the Fund; and
- (f) with the approval of the Lieutenant Governor in Council, enter into an agreement to administer any other pension plan or fund or administer a benefit plan to provide health or medical or other benefits to persons who have ceased to be members of the Plan and are entitled to a pension, and to recover, where appropriate, the costs of such administration from that plan or fund.

33.—(1) The Board may establish such committees as are considered necessary or desirable.

Committees

(2) A committee established by the Board may, with the approval of the Board and in accordance with the policy established by the committee or the Board, delegate to an officer or employee of the Board any of the duties and responsibilities of the committee, including those delegated to the committee by the Board.

Committee may delegate

34. The quorum for any meeting of the Board or a committee of the Board shall be at least a majority of the members of the Board or committee.

Quorum

35. The expenses of the operation of the Board, the administration of the Plan and the management of the Fund shall be paid out of the Fund.

Expenses

36. After the close of each fiscal year, the Board shall submit to the Minister a report for the fiscal year just ended of the financial and other affairs of the Plan and the Fund, and the Minister shall submit the report to the Lieutenant Governor in Council and shall then lay the report before the Legislative Assembly if it is in session or, if not, at the next session.

Annual report

37.—(1) In the reports to the Minister under section 36, the Board shall identify,

Report re O.P.P. early retirement benefit

- (a) the additional cost to the Plan of the pension provided to members of the Ontario Provincial Police Force by subsection 15 (4) over the cost of the pension or deferred pension that would be payable without that subsection; and

- (b) the financial benefit to the Plan from the contributions of members of the Ontario Provincial Police Force under subsection 6 (2), from the employer's contributions made to match contributions under that subsection, and from the return reasonably attributable to the investment of the contributions and of the proceeds received by the Fund from the transfers under subsections 6 (2) and (3) of this Act.

Idem

(2) The Board shall also indicate in its reports the sufficiency of the financial benefits referred to in clause (1) (b) to meet the additional costs referred to in clause (1) (a) and whether those additional costs for pensions that are being paid at the end of the year for which the report is made have been met by the financial benefits that have then accrued to the Fund.

Indemnification

**38.—(1)** Each employee of the Board and his or her heirs, executors and administrators shall be indemnified and saved harmless by the Board from and against all costs, charges and expenses sustained or incurred in or about any action, suit, proceeding or claim against him or her for any act, omission, deed, matter or other thing made, done or permitted or omitted to be made or done in or about the execution of the duties of his or her employment by the Board, and every payment made for the indemnification is an administrative expense of the Board.

Limitation

(2) Indemnification under subsection (1) does not extend to the act or omission to act of any person that was done or omitted to be done dishonestly or in bad faith.

## SCHEDULE 2

## INTERIM PAYMENTS OF UNFUNDED LIABILITY

	<i>Date of payment</i>	<i>Amount of payment</i>
1.	January 1, 1990	\$6,796,000
2.	February 1, 1990	6,826,000
3.	March 1, 1990	6,856,000
4.	April 1, 1990	6,887,000
5.	May 1, 1990	6,918,000
6.	June 1, 1990	6,949,000
7.	July 1, 1990	6,980,000
8.	August 1, 1990	7,011,000
9.	September 1, 1990	7,042,000
10.	October 1, 1990	7,074,000
11.	November 1, 1990	7,106,000
12.	December 1, 1990	7,137,000
13.	January 1, 1991	7,169,000
14.	February 1, 1991	7,201,000
15.	March 1, 1991	7,234,000
16.	April 1, 1991	7,266,000
17.	May 1, 1991	7,298,000
18.	June 1, 1991	7,331,000
19.	July 1, 1991	7,364,000
20.	August 1, 1991	7,397,000
21.	September 1, 1991	7,430,000
22.	October 1, 1991	7,463,000
23.	November 1, 1991	7,496,000
24.	December 1, 1991	7,530,000
25.	January 1, 1992	7,564,000
26.	February 1, 1992	7,597,000
27.	March 1, 1992	7,631,000
28.	April 1, 1992	7,665,000
29.	May 1, 1992	7,700,000
30.	June 1, 1992	7,734,000
31.	July 1, 1992	7,769,000
32.	August 1, 1992	7,804,000
33.	September 1, 1992	7,838,000
34.	October 1, 1992	7,873,000
35.	November 1, 1992	7,909,000
36.	December 1, 1992	7,944,000



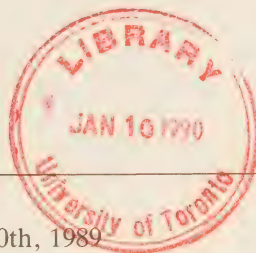


# Bill 36

(Chapter 73  
*Statutes of Ontario, 1989*)

## An Act to revise the Public Service Superannuation Act

The Hon. M. Elston  
*Chairman of the Management Board of Cabinet*



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**Bill 36**

**1989**

## An Act to revise the Public Service Superannuation Act

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## Interim payments of unfunded liability

HER MAJESTY, by and with the advice and consent of the Legislative Assembly of the Province of Ontario, enacts as follows:

## Definitions

**1.** In this Act, “actuary”, “Board”, “Crown”, “employer”, “Fund”, “member”, “Minister”, “pension”, “pension benefit”, “Plan”, “salary” and “Treasurer” have the same meaning as in section 1 of Schedule 1.

## Application

**2.** Subject to subsection 14 (2) and to section 24 of Schedule 1, this Act applies to every person employed after the 31st day of December, 1989 in the service of an employer.

Plan  
continued  
R.S.O. 1980,  
cc. 419, 490

**3.** The pension plan contained in the provisions of the *Public Service Superannuation Act* and the regulations thereunder, including the benefits provided under the *Superannuation Adjustment Benefits Act* in relation to pensions provided under the *Public Service Superannuation Act*, is continued as the Public Service Pension Plan as revised by this Act and set out in Schedule 1.

Plan  
documents

**4.** The terms of the Plan are those set out in Schedule 1, in this Act and in such other documents concerning the Plan as are created under this Act or Schedule 1.

Public  
Service  
Superan-  
nuation Fund  
continued

**5.—(1)** The Public Service Superannuation Fund established under the *Public Service Superannuation Act* is continued as the Public Service Pension Fund to provide benefits in respect of the Plan.

Board to  
administer

**(2)** The Plan and the Fund shall be administered by the Board in accordance with this Act and the Plan.

Future  
revision of  
Plan

**6.—(1)** The Lieutenant Governor in Council by order may amend the Plan and, without restricting the generality of the foregoing, may,

- (a) determine the methods or assumptions to be used to calculate any pension benefit provided under the Plan;
- (b) rescind the Plan and replace it with another pension plan;
- (c) extend, modify or restrict the conditions upon which persons may become members of the Plan;

- (d) establish a separate pension plan or plans for any class or classes of persons who are members of the Plan, and direct the transfer from the Fund to any fund related to such separately established pension plan or plans of any amount specified to represent the value, as determined by an actuarial valuation, of the pension benefits of persons who will be members of such separately established pension plan or plans;
- (e) increase or prospectively reduce, eliminate or modify any pension benefit set out in the Plan or the rate or amount of contribution to be made under the Plan;
- (f) regulate the administration of the Plan and the composition, duties and powers of the Board;
- (g) exercise with respect to any plan established under this section the powers conferred by this section.

(2) To the extent that an amendment of the Plan made under subsection (1) conflicts with the *Pension Benefits Act, 1987* in a matter in which the conflict is not authorized by this Act or Schedule 1, the amendment is void.

Limitation re  
amendment  
1987, c. 35

(3) If the Crown enters into an agreement for an indefinite term with representatives of a majority of the members with respect to,

Agreement  
for joint  
responsibility

- (a) the joint management of the Plan and the Fund by the Crown and representatives of the members;
- (b) the sharing between the Crown and the members of surpluses and deficiencies in the Fund;
- (c) prior consultation between the Crown and the representatives to determine if agreement can be reached between them concerning any change in benefits under the Plan or in the rate or amount of contributions to the Fund from the Crown or the members; and
- (d) mediation procedures following a failure to agree on a change in benefits under the Plan or in the rate or amount of contributions to the Fund,

the powers mentioned in subsection (1) shall, while the agreement remains in force, be exercised only in accordance with the agreement.



Idem (4) An agreement mentioned in subsection (3) may also provide that, to the extent specified in the agreement, subsections 11 (2) and (5) cease to apply while the agreement is in force.

Agreement for member responsibility (5) If it is agreed between the Crown and representatives of a majority of members that the management of the Plan, the entitlement to surpluses in the Fund and the liability for deficiencies in the Fund will be permanently assumed by the members from time to time of the Plan and that the liability of the Crown to contribute to the Fund will be limited to a specified amount or to a specified percentage of members' contributions or salaries, the Lieutenant Governor in Council may provide by order that the powers mentioned in subsection (1) shall be exercised thereafter only in accordance with the agreement and by the person, persons or entity specified in the agreement.

Application of R.S.O. 1980, c. 446 (6) The *Regulations Act* does not apply with respect to an order amending the Plan.

Transfer of SAF Account R.S.O. 1980, cc. 419, 490 **7.—**(1) As of the 31st day of December, 1989, the Treasurer shall transfer to the Public Service Superannuation Fund Account maintained in the Consolidated Revenue Fund under the *Public Service Superannuation Act* the total assets and liabilities of the Public Service Superannuation Fund Account in the Superannuation Adjustment Fund Account maintained in the Consolidated Revenue Fund under the *Superannuation Adjustment Benefits Act*.

Transfer of O.P.P. Supplementary Benefits Account (2) As of the 31st day of December, 1989, the Treasurer shall transfer to the Public Service Superannuation Fund Account maintained in the Consolidated Revenue Fund under the *Public Service Superannuation Act* the total assets and liabilities of the Ontario Provincial Police Supplementary Benefits Account maintained in the Consolidated Revenue Fund under Order in Council 196/85.

Interest (3) As of the 31st day of December, 1989, the Treasurer shall pay to the Public Service Superannuation Fund Account maintained in the Consolidated Revenue Fund under the *Public Service Superannuation Act* interest at the rates and on the terms determined by the Lieutenant Governor in Council on the cash balances that from time to time stood to the credit of,

(a) the Public Service Superannuation Fund Account maintained in the Consolidated Revenue Fund under the *Public Service Superannuation Act*;

- (b) the Public Service Superannuation Fund Account in the Superannuation Adjustment Fund Account maintained in the Consolidated Revenue Fund under the *Superannuation Adjustment Benefits Act*; and R.S.O. 1980,  
c. 490
- (c) the Ontario Provincial Police Supplementary Benefits Account mentioned in subsection (2),

in the period from the 1st day of April, 1989 to the 31st day of December, 1989.

(4) Interest payable by the Treasurer on assets held on the 1st day of April, 1989 in the accounts referred to in clauses (3) (a), (b) and (c) shall be accrued to the 31st day of December, 1989 and paid as of that date to the Public Service Superannuation Fund Account despite a later time for payment specified in any instrument that provides for payment of the interest, and the payment made to the Account reduces the liability of the Treasurer under the instrument for interest by the amount paid. Idem

(5) Payments by the Treasurer made under subsections (3) and (4) shall be made from the Consolidated Revenue Fund. Idem

(6) As of the 1st day of January, 1990, the Treasurer shall transfer to the custody and control of the Board the total amount of the assets on the 31st day of December, 1989 of the Public Service Superannuation Fund Account maintained in the Consolidated Revenue Fund under the *Public Service Superannuation Act*, including assets and payments transferred or made to that account under this section, by issuing to the Board debentures of the Province of Ontario that are equal to the amount of the assets and that, in the opinion of the Treasurer, provide for the payment of principal and interest on terms substantially equivalent to those on which the assets are held on the 31st day of December, 1989. Transfer of  
PSSF  
Account  
  
R.S.O. 1980,  
c. 419

(7) All liabilities on the 1st day of January, 1990 of the accounts mentioned in subsections (1), (2) and (6) are liabilities of the Fund on and after that date and, as of that date, the accounts cease to exist in the Consolidated Revenue Fund. Liabilities  
transferred to  
Fund

(8) During the period from the 31st day of December, 1989 to the 30th day of June, 1990, the Treasurer may establish outside the Consolidated Revenue Fund an account or accounts for such temporary period as the Treasurer considers advisable to facilitate the orderly transfer to the Board of the assets of the Fund and the administration of the Plan. Temporary  
account  
authorized

## Debentures

(9) For the purpose of subsection (6), the Treasurer may, on behalf of Ontario, issue to the Fund debentures of Ontario in such amounts, upon such terms as to the payment of principal and interest, maturing at such time or times and either with or without the privilege of prepayment of the whole or any part of the principal amount of any such debenture as will, in the opinion of the Treasurer, meet the requirements of this section, and any debenture may provide that it is not assignable or transferrable.

Investments  
authorized  
1987, c. 35

(10) Despite the *Pension Benefits Act, 1987* and regulations thereunder, the receipt and holding by the Board of debentures issued under this section shall not be considered imprudent or unreasonable or contrary to that Act and regulations thereunder, and the nature, amount and terms of the debentures may be taken into account by the Board and any committee of the Board in determining future investments of the assets of the Plan.

Application  
of  
1987, c. 35

(11) Section 82 of the *Pension Benefits Act, 1987* does not apply to the transfers described in this section.

Initial  
unfunded  
liability

**8.—(1)** In this section and in sections 9 and 10 and subsection 11 (3),

“actuarial gain” and “actuarial loss” mean, respectively, the sum, if positive, or the sum, if negative, of,

- (a) the gain to the Plan during the period since the review date of the immediately preceding going concern valuation resulting from the difference between actual experience and the experience expected by the actuarial assumptions on which that valuation was based,
- (b) the amount by which the going concern liabilities decrease as a result of an amendment to the Plan, and
- (c) the amount by which the going concern liabilities decrease or the going concern assets increase as a result of a change in actuarial methods or assumptions upon which the current going concern valuation is based, as of the review date for a going concern valuation,

but clause (a), (b) or (c) or any combination thereof shall be counted as a negative in the calculation of the sum if,

- (d) the experience of the Plan results in a loss rather than a gain,
- (e) an amendment increases the going concern liabilities, or
- (f) a change in actuarial methods or assumptions results in an increase in going concern liabilities or a decrease in going concern assets, as the case may be;

“going concern assets” means the value of the assets of the Plan, including accrued and receivable income and the present value of future contributions and investment income, determined on the basis of a going concern valuation;

“going concern liabilities” means the present value of the expenses of the Plan and the accrued and unaccrued benefits of the Plan determined on the basis of a going concern valuation;

“going concern unfunded actuarial liability” means the excess of going concern liabilities over going concern assets;

“going concern valuation” means a valuation of assets and liabilities of the Plan using methods and actuarial assumptions considered by the actuary who valued the Plan to be in accordance with generally accepted actuarial principles and practices for the valuation of a continuing pension plan;

“initial valuation” means the going concern valuation of the Plan as at the 1st day of January, 1990 required by section 10;

“past service unfunded actuarial liability” means the amount of going concern unfunded actuarial liability that results from the provision of benefits with respect to prior employment for which no benefit was provided at the time of the employment or from an amendment to the Plan that provides benefits for employment prior to the date of the amendment if the employment had not previously been recognized for purposes of the provision of pension benefits;

“review date” means the last date of the period under review in a report required under the *Pension Benefits Act, 1987* or regulations thereunder; 1987, c. 35

“solvency assets” means the sum determined in accordance with subsections (2) and (3) of,



- (a) the market value of investments held by the Plan or a value related to the market value by means of an averaging method that stabilizes short-term fluctuations of the market values over a period of not more than five years, plus any cash balances and accrued or receivable income items,
- (b) the present value of any special payments required to liquidate any past service unfunded actuarial liability established on or after the 1st day of January, 1988,
- (c) the present value of any special payments other than those referred to in clause (b) established on or after the 1st day of January, 1988 that are scheduled for payment within five years after the review date, and
- (d) the present value of future special payments resulting from the initial valuation;

“solvency deficiency” means the excess of the solvency liabilities over the solvency assets;

“solvency gain” means the sum, if positive, of,

- (a) the gain to the Plan during the period since the review date of the immediately preceding valuation of solvency assets and solvency liabilities resulting from the difference between actual experience and the experience expected by the actuarial assumptions on which that valuation was based, and
- (b) the amount by which the solvency liabilities decrease or the solvency assets increase during the period since the review date of the immediately preceding valuation of solvency assets and solvency liabilities as a result of a change in the actuarial methods or assumptions upon which the current valuation of solvency assets and solvency liabilities is based,

but either of clause (a) or (b) shall be counted as a negative in the calculation of the sum if the experience of the Plan results in a loss rather than a gain or if a change in actuarial methods or assumptions results in an increase in solvency liabilities or a decrease in solvency assets, as the case may be;



“solvency liabilities” means an amount that is not less than the liabilities of the Plan determined as if the Plan had been wound up, taking into account liabilities for the adjustment for inflation under the Plan and the requirements of section 75 of the *Pension Benefits Act, 1987*.

1987, c. 35

(2) The present values referred to in clauses (b), (c) and (d) of the definition of “solvency assets” shall be determined on the basis of the assumed interest rate used in determining whether there is a solvency deficiency.

Present values re solvency assets

(3) In calculating the solvency assets, if there is no market value for an investment of the Plan and the investment is issued or guaranteed by a government, the book value of the investment may be used instead of market value.

If no market value

(4) The provisions of this section and of sections 9, 10 and 11 prevail over any conflicting provisions of the *Pension Benefits Act, 1987* or of a regulation made under that Act.

Conflicting provisions

**9.**—(1) For each month in the period commencing with the 1st day of January, 1990 and ending with the last day of the month in which the initial valuation is approved by the Pension Commission of Ontario, the Treasurer shall pay to the Fund from the Consolidated Revenue Fund the amount shown for that month in Schedule 2.

Interim payments of unfunded liability

(2) The Treasurer may, with the appropriate adjustment for interest, at any time prepay one or more of the outstanding payments shown in Schedule 2.

Prepayment

(3) Payments made under subsection (1) or (2) shall be credited against any special payments that are to be made in the same period to liquidate a going concern unfunded actuarial liability disclosed by the initial valuation, and any amount by which the payments made under those subsections are less than the special payments for that period as a result of the initial valuation shall be paid by the Treasurer to the Fund from the Consolidated Revenue Fund within fifteen months following the month when the initial valuation is approved by the Pension Commission of Ontario.

Application of estimated payments

**10.**—(1) As soon as practicable after the 31st day of December, 1989, the Board shall cause to be prepared a going concern valuation of the Plan as at the 1st day of January, 1990, and the valuation shall include the adjustment of pensions for inflation under the Plan.

Initial valuation

(2) The initial valuation shall,

Idem

- (a) comply with this section and section 11;
- (b) be delivered by the actuary to the Board and to the Minister and the Treasurer, and shall be filed with the Pension Commission of Ontario by the Board only after the Minister and the Treasurer have advised the Board in writing that they agree that the initial valuation delivered to them be filed; and
- (c) for all purposes of the Plan determine the going concern unfunded actuarial liability or surplus of the Plan as at the 1st day of January, 1990.

Liability  
liquidated

(3) Any going concern unfunded actuarial liability disclosed by the initial valuation shall be liquidated by a series of special payments from the Consolidated Revenue Fund to be made over the forty years commencing on the 1st day of January, 1990.

Calculation  
of special  
payments

(4) Each special payment mentioned in subsection (3) shall be calculated as a constant percentage of the projected future earnings from employment used to calculate pension benefits during the forty years commencing on the 1st day of January, 1990 of all persons who are members of the Plan on that date and of those who are expected to join the Plan during those forty years.

Present value  
of special  
payments

(5) The present value, as at the 1st day of January, 1990, of the full series of special payments shall equal the amount of the going concern unfunded actuarial liability to be liquidated.

Schedule of  
payments

(6) The actuary shall prepare and submit with the initial valuation a schedule showing the dollar amount of each special payment in the first six years of the series and the formula by which the dollar amount of the remaining special payments in the series is determined.

Prepayments  
and  
additional  
payments

(7) The Treasurer may, at any time, prepay a part or all of any outstanding special payments or may make additional payments to the Fund to be applied, with appropriate adjustments for interest, as the Treasurer shall direct to reduce the going concern unfunded actuarial liability disclosed by the initial valuation, and every such payment may be paid out of the Consolidated Revenue Fund.

Consistent  
assumptions

(8) Subject to subsection (4),

- (a) the projected future earnings from employment used to calculate pension benefits shall be deter-

mined using actuarial assumptions consistent with those made in the initial valuation;

- (b) the present value of the series of special payments shall be determined using the interest rate used in the initial valuation; and
- (c) all other actuarial assumptions made in the determination of the series of special payments shall be, so far as possible, consistent with actuarial assumptions made in the initial valuation.

**11.—**(1) A going concern valuation of the Plan made after the initial valuation shall include the present value of the outstanding special payments calculated under section 10 that remain to be made to liquidate the going concern unfunded actuarial liability disclosed by the initial valuation, and the actuary shall prepare and submit with the valuation a schedule showing the amount, determined from the formula mentioned in subsection 10 (6), of each remaining special payment for the next six years or for the period of time for which special payments remain to be made, whichever is shorter.

Subsequent  
valuations

(2) Any actuarial gain disclosed by a going concern valuation made after the initial valuation shall be applied in the following order and manner:

Application  
of actuarial  
gain

1. The amount of the gain shall first be applied to reduce, and to eliminate if possible, the payments required to liquidate any unamortized balance of a solvency deficiency disclosed by the initial valuation or a subsequent valuation.
2. When no solvency deficiency remains, the amount of the gain shall be applied to reduce, and to eliminate if possible, a going concern unfunded actuarial liability disclosed by a valuation after the initial valuation.
3. When no other going concern unfunded actuarial liability remains, the amount of the gain shall be applied to reduce, and to eliminate if possible, the unliquidated amount of the going concern unfunded actuarial liability disclosed by the initial valuation.

(3) In determining any solvency gain or solvency deficiency of the Plan, solvency assets shall include the present value of future special payments resulting from the initial valuation.

Special  
payments a  
solvency  
asset

When special  
payments  
cease

(4) When the special payments made as a result of the initial valuation, the prepayments and additional payments made under subsection 10 (7), and the actuarial gains applied under paragraph 3 of subsection (2) have liquidated the going concern unfunded actuarial liability disclosed by the initial valuation, no further special payments shall be made, notwithstanding that the period of forty years used in the initial valuation has not then expired.

Minister to  
approve  
valuation

(5) No valuation of the Plan after the initial valuation shall be filed by the Board with the Pension Commission of Ontario until the Minister has advised the Board in writing that he or she agrees that the valuation be filed.

Payment of  
pensions  
under other  
Acts  
R.S.O. 1980,  
cc. 419, 490

**12.** Every allowance, annuity, deferred annuity or other payment under the *Public Service Superannuation Act* or a predecessor Act or under the *Superannuation Adjustment Benefits Act*, including any payment authorized to be made from the Consolidated Revenue Fund, that, before the 1st day of January, 1990, a person is receiving, is entitled to receive, or is entitled to receive with the payment thereof deferred until the year 1990 or later, shall be paid out of the Fund in accordance with the Act under which entitlement to the payment arose.

Expiry of  
appointments

**13.** On the 31st day of December, 1989, the term of appointment of any person under the *Public Service Superannuation Act* as a member of the Public Service Superannuation Board expires.

Continued  
application

**14.—(1)** The *Public Service Superannuation Act*, as it read on the 31st day of December, 1989, continues to apply to the computation or payment of every allowance, annuity, deferred annuity or payment to the payment of which a person has become entitled under that Act prior to that date, and continues to apply in respect of every person who, within the meaning of that Act, has ceased to be a contributor before that date and is entitled to a deferred annuity under that Act.

Exception  
for re-  
employment

(2) A person mentioned in subsection (1) who is re-employed in the service of the Crown or who becomes a member of the Plan, on or after the 1st day of January, 1990, for a prescribed period of time and in prescribed circumstances, terms or conditions, and who is required by, or entitled under, the Plan to contribute to the Fund in respect of such re-employment, may participate in the Plan to the extent prescribed with respect to the computation or payment of a pension or other payment and subsection (1) does not apply in the circumstances.

(3) The Lieutenant Governor in Council may make regulations prescribing a period or periods of time and prescribing circumstances, terms or conditions and the extent of participation in the Plan for the purpose of subsection (2). Regulations

**15.** The provisions of the *Superannuation Adjustment Benefits Act* relating to the payment of, or contribution for, adjustment benefits or any other benefit described in that Act in respect of any allowance, annuity, deferred annuity or other payment arising under the *Public Service Superannuation Act* cease to apply on and after the 1st day of January, 1990. R.S.O. 1980, c. 490 ceases to apply  
R.S.O. 1980, c. 419

**16.—(1)** A contributor as defined in the *Public Service Superannuation Act* who, Post-retirement marriage

- (a) is being paid an allowance or annuity under that Act;
- (b) has no spouse entitled to a survivor allowance under section 20 of that Act; and
- (c) becomes the spouse of a person who would not be entitled on the death of the contributor to a survivor allowance under section 20 of that Act,

may in writing direct the Board to pay to the person, if he or she survives the death of the contributor, a survivor allowance under section 20 of that Act for life of 50 per cent, 55 per cent, 60 per cent, 65 per cent, 70 per cent or 75 per cent of the allowance or annuity received by the contributor immediately before his or her death.

(2) A direction mentioned in subsection (1) must be delivered to the Board, Time limit

- (a) within ninety days after the date on which the contributor became the spouse of the person to whom the survivor allowance is directed to be paid; or
- (b) if immediately before the person becomes the spouse of the contributor there is a child of the contributor who would be entitled on the contributor's death to receive an allowance under the *Public Service Superannuation Act*, within ninety days after the date the child ceases to be entitled to receive the allowance;
- (c) the 30th day of June, 1990; or



- (d) the last day of the sixth month following the month in which this Act receives Royal Assent.

Exception

(3) The Board may accept a direction delivered after the time mentioned in subsection (2) if the Board is satisfied that the contributor is in good health having regard to his or her age.

Actuarial  
reduction of  
allowance

(4) The annuity or allowance payable to a contributor who has given a direction in accordance with this section shall be actuarially reduced in a manner approved by the Board to reflect the survivor allowance directed to be paid and, subject to subsection (5), and to section 20 of the *Public Service Superannuation Act*, the survivor allowance shall be paid in the percentage specified in the direction to the spouse if he or she survives the death of the contributor.

R.S.O. 1980,  
c. 419

Prior interest  
of child

(5) A survivor allowance under this section shall not be paid while there is a child of the deceased contributor entitled to receive an allowance as a result of the death of the contributor.

Refund when  
no survivor  
allowance  
payable

(6) If a contributor who is in receipt of an allowance or annuity dies survived by a child or children under eighteen years of age or by a spouse from whom the contributor is not living separate and apart, and if none of them is entitled to a survivor allowance under section 20 of the *Public Service Superannuation Act*, this section or that Act as a result of the death of the contributor, the amount, if any, by which twice the total of contributions made under the *Public Service Superannuation Act* to the Public Service Superannuation Fund by or on behalf of the contributor and of the interest credited in that Fund to the contributor exceeds the total payments made from the Fund and the Public Service Superannuation Fund to the contributor shall be paid from the Fund to the surviving spouse, or if there is no surviving spouse, to the child or children, if any, of the contributor under eighteen years of age at the contributor's death.

Repeals

**17.—**(1) The following are repealed on the 1st day of January, 1990:

1. The *Public Service Superannuation Act*, being chapter 419 of the Revised Statutes of Ontario, 1980, excluding subsection 20 (7).
2. Item 13 of the Schedule to the *Revised Statutes Amendment Act, 1981*, being chapter 66.

3. The *Public Service Superannuation Amendment Act, 1983*, being chapter 44.
4. Section 3 of the *Provincial Judges and Masters Statute Law Amendment Act, 1983*, being chapter 78.
5. The *Public Service Superannuation Amendment Act, 1984*, being chapter 22.
6. Section 74 of the *Family Law Act, 1986*, being chapter 4.
7. The *Public Service Superannuation Amendment Act, 1986*, being chapter 12.
8. Section 60 of the *Equality Rights Statute Law Amendment Act, 1986*, being chapter 64.

(2) Subsection 20 (7) of the *Public Service Superannuation Act* is repealed on the 31st day of December, 1989. Idem

**18.** This Act comes into force on the 31st day of December, 1989. Commence-  
ment

**19.** The short title of this Act is the *Public Service Pension Act, 1989*. Short title

## SCHEDULE 1

## PUBLIC SERVICE PENSION PLAN

## Definitions

## 1. In this Schedule,

“actuary” means a Fellow of the Canadian Institute of Actuaries;

“annual salary rate” means the hourly, weekly or other rate at which a person’s salary is paid expressed as an annual salary according to such consistently applied formula as the Board considers appropriate having regard to the hours regularly worked by a full-time employee in the position occupied by the person for whom the annual salary rate is determined or in a comparable position;

“average annual salary” means the average of the member’s annual salary rate in each month of the period of sixty consecutive months of membership in the Plan that produces the highest average, but if the member does not have a period of sixty consecutive months of membership in the Plan, “average annual salary” means the average of the member’s annual salary rate in each month of the member’s longest period of consecutive months of membership in the Plan;

R.S.C. 1985,  
c. C-8      “average year’s maximum pensionable earnings”, with respect to any member, means the average of the Year’s Maximum Pensionable Earnings under the *Canada Pension Plan* for the year in which the member ceases to be a member of the Plan and for each of the two preceding years;

“Board” means the Public Service Pension Board referred to in this Schedule;

1986, c. 4      “child” has the same meaning as in the *Family Law Act, 1986*;

“continuous”, in relation to employment, membership or service, means without regard to periods of temporary suspension of the employment, membership or service, and without regard to periods of lay-off from employment;

“credit”, when used in reference to credit in the Plan, means the total period of time, calculated in years of full-time employment, for which contributions are made to the Fund on behalf of the member or for which a member is employed and for which contributions to the Fund have been made, and where the member’s employment is less than full-time employment, credit shall be given on the basis of the proportion of full-time employment represented by the member’s employment for which contributions are made to the Fund;

“Crown” means the Crown in right of Ontario;

“employer” means,

(a) the Crown,

(b) an agency, board, commission, foundation or organization designated by order of the Lieutenant Governor in Council as an employer for the purposes of the Plan,

(c) the Provincial Auditor, and

(d) the employer of persons required by any Act of the Legislature to be members of this Plan or the pension plan established by the *Public Service Superannuation Act* or a predecessor Act;

“former member” means a person who has ceased to hold a position, office or designation that entitles the person to be a member of the Plan, and who,

(a) is entitled, either immediately or at a future time, to payment of a pension under the Plan, or

(b) is entitled to receive any other payment under the Plan;

“Fund” means the Public Service Pension Fund;

“member” means a person,

(a) who is required to join the Plan,

(b) who is designated for the purpose of section 9 of the Plan, or

(c) who is not required to join the Plan, but is entitled to join the Plan and has elected to do so,

but does not include a former member;

“Minister” means the Chairman of the Management Board of Cabinet;

“pension” means a pension benefit that is being paid to a person under the Plan;

“pension benefit” means the aggregate monthly, annual or other periodic amounts, if any, to which a member will become entitled under the Plan on or after ceasing to be a member or to which any other person will become entitled under the Plan upon the death of a member or former member;

“Plan” means the Public Service Pension Plan set out in this Schedule;

“salary”, in relation to a member, means the amount of money payable to a member and computed by reference to the hours, days, weeks or other specific periods of time for which the member is employed, but does not include overtime pay or any payment to the member in lieu of a benefit provided by the employer or any payment determined by the Board not to be part of a member’s salary;

“spouse” means either of a man and woman who,

(a) are married to each other, or

(b) are not married to each other and are living together in a conjugal relationship,

(i) continuously for a period of not less than three years, or

(ii) in a relationship of some permanence, if they are the natural or adoptive parents, as defined in the *Family Law Act*, 1986, c. 4 1986, of a child;

“Treasurer” means the Treasurer of Ontario and Minister of Economics.

2.—(1) The following persons and classes of persons who have not attained sixty-five years of age are members of the Plan: Plan members

R.S.O. 1980,  
c. 418

1. Persons who are civil servants within the meaning of the *Public Service Act*.

2. A class of employees of any agency, board, commission, foundation or organization that is established under an Act of the Legislature and that is designated by order of the Lieutenant Governor in Council as one whose employees in that class are required to be members of the Plan.

3. Persons employed in the Office of the Provincial Auditor.

R.S.O. 1980,  
c. 419

4. Persons required by any Act of the Legislature to be members of this Plan or the pension plan established by the *Public Service Superannuation Act* or a predecessor Act.

5. Any person employed in a capacity or position that is designated by order of the Lieutenant Governor in Council as requiring the employee to be a member of the Plan.

Elective  
membership

(2) Persons to whom subsection (1) does not apply and who are employed,

R.S.O. 1980,  
c. 418

(a) by the Crown under the *Public Service Act*;

(b) by an agency, board, commission, foundation or organization designated by order of the Lieutenant Governor in Council as one whose employees in a designated class are members of the Plan; or

(c) by an agency, board, commission, foundation or organization the permanent and full-time probationary staff of which are by any Act required to be members of the Plan,

are entitled to be members of the Plan upon filing with the Board a written election to be a member, and after fulfilling any conditions specified in the order mentioned in clause (b).

Idem

(3) A person appointed by the Lieutenant Governor in Council to membership on an agency, board, commission, foundation or organization is, when the appointment so permits or the position has been designated by the Lieutenant Governor in Council for the purpose of this subsection, entitled to be a member of the Plan upon filing with the Board a written election to be a member, and after fulfilling any conditions specified in the appointment or designation.

Termination  
of  
membership

3. A member ceases to be a member of the Plan upon termination by death or otherwise of the employment, office or circumstances that required or entitled him or her to be a member of the Plan or upon attaining the maximum age for contributors to a pension fund or plan specified under the provisions of the *Income Tax Act* (Canada) and regulations made thereunder for the registration under that Act of a pension fund or plan.

R.S.C. 1952,  
c. 148

Persons not  
entitled to be  
members

4. A person is not entitled to be a member of the Plan if the person,

R.S.C. 1985,  
c. C-8

(a) is a member of, or a contributor to, a pension plan to which the Crown contributes other than this Plan or the *Canada Pension Plan*; or

(b) has attained the maximum age for contributors to a pension fund or plan specified under the provisions of the *Income Tax Act* (Canada) and regulations made thereunder for the registration under that Act of a pension fund or plan.



5.—(1) Subject to section 7, contributions required to be made under this Plan by an employer or by any member, including interest required to be paid to the Fund, shall be paid into the Fund, and any payment required by the Plan to be made to any person shall be made out of the Fund, and all moneys not required to be paid out shall be invested to meet the obligations and liabilities of the Plan.

Contributions  
to and  
payments  
from Fund

(2) The fiscal year of the Plan is the twelve-month period commencing on the 1st day of January in each year.

Fiscal year

6.—(1) Subject to subsection (5), every member shall contribute to the Fund from the salary paid to the member for the calendar year,

Contributions  
by members

(a) 8 per cent of the amount of salary that does not exceed the Year's Basic Exemption as prescribed by the *Canada Pension Plan*;

R.S.C. 1985,  
c. C-8

(b) 6.2 per cent of the amount of salary that exceeds the Year's Basic Exemption and does not exceed the Year's Maximum Pensionable Earnings as prescribed by the *Canada Pension Plan*; and

(c) 8 per cent of the amount of salary in excess of the Year's Maximum Pensionable Earnings as prescribed by the *Canada Pension Plan*.

(2) In addition to the contribution required by subsection (1), every member employed in the Ontario Provincial Police Force shall contribute to the Fund an amount equal to 2 per cent of the salary paid to him or her for the calendar year.

Additional  
contribution

(3) The contributions to be made by a member to the Fund shall be deducted from the member's salary by the person who pays the member's salary, and shall be paid to the credit of the Fund within fifteen days from the date the contribution was deducted or within such longer time as the Board authorizes in writing.

Deduction of  
contributions

(4) A member shall be given credit in the Plan for the time in respect of which contributions to the Fund are made by or on behalf of the member.

Credit for  
contributions

(5) A member may cease to contribute to the Fund on or after attaining sixty-five years of age.

When no  
contribution  
required

(6) Interest calculated as determined by the Board shall be credited to each member in each year of the Plan on the amount of contributions, including interest previously credited to the member, standing to the member's credit in the Fund.

Interest

7.—(1) Unless otherwise expressly stated in the Plan, for each month the employer shall pay into the Fund an amount equal to the amount of contributions paid into the Fund by or on behalf of members in that month.

Contributions  
by employer

(2) If the salary of members who are contributing to the Fund is paid by a board, commission, foundation, agency, branch or division that has a special fund or appropriation designated or granted by the Lieutenant Governor in Council or the Assembly for the payment of the employer's contributions under the Plan, contributions required to be made by the employer shall be made from that fund or appropriation in accordance with such formula as may be determined by the Minister for the purpose.

Special funds

(3) Any amount in the Fund that is indicated by an actuarial valuation for the purpose of the Plan to be surplus to the requirements of the Plan while it continues in existence may, at the direction of the Minister, be applied to the payment of the contributions to be made by the employer

Surplus may  
reduce  
employer  
contributions

under subsection (1) for so long as there is no going concern unfunded actuarial liability or solvency deficiency, as defined in subsection 8 (1) of this Act, in the Plan.

Surplus	(4) Any amount in the Fund that is indicated by an actuarial valuation for the purpose of the Plan to be surplus to the requirements of the Plan while it continues in existence or upon its wind up may, to the extent permitted by the <i>Pension Benefits Act, 1987</i> , be withdrawn by the employer from the Fund.
1987, c. 35	
Deficiency	(5) If in any year the amount of cash and assets capable of sale in the Fund is insufficient to meet the payments out of the Fund in the year after the sale of the assets capable of sale, the Treasurer shall pay from the Consolidated Revenue Fund an amount sufficient to make up the deficiency.
Limitation	(6) Subsection (5) ceases to apply if an agreement mentioned in subsection 6 (5) of this Act is in force.
Unfunded liabilities	(7) Subject to this Act, the employer shall pay into the Fund the amount indicated in an actuarial valuation to be required to meet any unfunded liabilities of the Plan.
Leave of absence with pay	8.—(1) If a member has been granted a leave of absence from employment and continues to receive a part or all of his or her salary during the leave, the member shall make the contributions required by section 6.
Leave of absence without pay	(2) If a member is granted a leave of absence from employment and receives no salary during the leave, no credit shall be given to the member in the Plan for the period of the leave of absence unless the member contributes to the Fund in accordance with section 11.
Continued membership on release from employment	9.—(1) A member who is released from employment and who is designated by the Lieutenant Governor in Council for the purpose of this section continues to be entitled to contribute to the Fund in accordance with this section until the end of the month in which the member becomes eligible for a pension under section 15, or until the expiration of five years from the member's release from employment, whichever first occurs.
Contributions	(2) Contributions by or on behalf of a member mentioned in subsection (1) shall be made on the basis of the member's annual salary rate immediately before the member was released from employment.
Long term income protection R.S.O. 1980, c. 418	10.—(1) In this section, "long term income protection plan" means the Long Term Income Protection Plan from time to time applicable to members who are public servants, as defined in the <i>Public Service Act</i> , to mitigate the loss of income resulting from a lengthy disability, and includes any plan that applies to members who are not public servants if the Board considers the plan to be substantially similar to the Long Term Income Protection Plan applicable to public servants.
Contribution on behalf of disabled member	(2) If a member qualifies for a benefit under a long term income protection plan as a result of a disability incurred on or after the 1st day of July, 1974, the employer that employed the member on the date when the member qualified for the benefit shall, subject to subsection (6), contribute to the Fund on behalf of the member the amounts set out in subsections (3), (4) and (5) while the member continues to qualify for the benefit.
Amount	(3) Subject to subsection (4), the contributions mentioned in subsection (2) shall be calculated in accordance with section 6 and paid on the annual salary rate of the member immediately before the disability was incurred in respect of which he or she qualifies for a benefit.

- (4) If the member mentioned in subsection (2) was, in the opinion of the Board, employed on a part-time basis in the month before the disability was incurred, the contributions mentioned in subsection (2) shall be calculated in accordance with section 6 and paid only for that part of each month in which the member continues to qualify for the benefit that is equal to the ratio that, in the twelve months ending on the last day of the month immediately preceding the month when the disability was incurred, the member's part-time employment is of full-time employment in the position occupied by the member or in a comparable position. Part-time employment
- (5) The annual salary rate on which contributions under this section are based shall be increased in each year following the year in which the member first qualified for a benefit by the same percentage as would be applicable if the annual salary rate of the member immediately before the cessation of employment as a result of disability were increased in each subsequent year during which the member remains entitled to benefits under the Long Term Income Protection Plan in the same manner as an adjusted pension is increased in each year by the adjustment for inflation under section 24. Increased contribution
- (6) Subsections (2), (3), (4) and (5) continue to apply whether or not the member is in receipt of the benefit under the Long Term Income Protection Plan, but those subsections cease to apply when the member ceases to be a member, accrues thirty-five years of credit in the Plan or attains sixty-five years of age, whichever first occurs. When contributions cease
- (7) A person on whose behalf contributions are made under subsection (2) continues to be a member of the Plan and to accrue credit in the Plan for the time in respect of which contributions are made on his or her behalf under this section. Continued membership
- (8) The annual salary rate on which contributions are based under this section shall be included in the computation of the average annual salary of a member on whose behalf contributions are made under this section. Average annual salary
- 11.—(1)** On such terms and conditions as are fixed by the Board, a member may purchase credit in the Plan, Prior service with the Crown, etc.
- (a) for a period of active service during World War II or the Korean War in His or Her Majesty's naval, army or air forces, in the Canadian or British merchant marine, or in any naval, army or air force that was allied with His or Her Majesty's forces and that is designated by order of the Lieutenant Governor in Council;
- (b) for a period of service with an employer who contributed to the Fund or a predecessor fund throughout the period, and for which the member has no credit in the Plan and no claim for pension benefits from the Plan;
- (c) for a period of employment by a person who did not contribute to the Fund or a predecessor fund for the period, if the period is before the member's becoming a member and if,
- (i) during that period of service, the person provided to employees a pension plan that is or was a pension plan registered under the *Income Tax Act* (Canada), and R.S.C. 1952, c. 148
- (ii) the period, if any, for which credit in the plan referred to in subclause (i) was given to the member is reduced by the period for which credit in the Plan is purchased so that credit in the Plan is not given for any part of the period for which credit is retained in the plan referred to in subclause (i);

(d) for a leave of absence without pay for more than one month for special or educational purposes; or

(e) for a leave of absence without pay for more than one month because of illness, pregnancy or adoption of a child.

Payment

(2) To purchase credit referred to in clause (1) (c), a member shall pay to the Fund the amount determined by the Board on the recommendation of the actuary to be equal to the actuarial value of the additional expected benefits to which the member will become entitled because of obtaining the credit.

Idem

(3) To purchase the credit referred to in clause (1) (b) or (e), a member shall pay to the Fund an amount equal to the product of,

(a) the annual salary rate of the member on the date when the member's written application containing all information required by the Board for the purchase of the credit is received by the Board;

(b) the contribution rates determined under subsection 6 (1); and

(c) the length in years of the period of prior service for which credit is purchased.

Idem

(4) Despite subsection (3), if any payment has been made from the Fund or a predecessor fund in respect of the service for which credit is being purchased under clause (1) (b), and if the total amount paid, including interest thereon at such rate as the Board determines, exceeds the amount determined under subsection (3) for the purchase of that credit in the Plan, the member making the purchase shall pay the higher amount.

Idem

(5) To purchase credit referred to in clause (1) (a) or (d), a member shall pay to the Fund an amount equal to the product of,

(a) the annual salary rate of the member on the date when the member's written application containing all information required by the Board for the purchase of the credit is received by the Board;

(b) twice the contribution rates determined under subsection 6 (1); and

(c) the length in years of the period of prior service for which credit is purchased.

Limitation

(6) Any credit referred to in subsection (1) may be purchased only if application therefor is made to the Board in writing within twenty-four months after the latest of,

(a) the day on which the member for whom credit is to be purchased became a member of the Plan;

(b) the last day of the most recent continuous period for which credit is being purchased; or

(c) the 31st day of December, 1989.

Instalments

(7) If the amount payable by a member to purchase credit under this section exceeds \$500, the amount may be paid in such number of instalments of principal and interest over a period of not more than ten years as the Board permits in accordance with terms and conditions established for instalment payments and for the completion of payment on the death or retirement from employment of the member.



(8) The employer is not required to pay to the Fund an amount equal to a payment made by any person under subsection (2), (5) or section 36.

Matching  
payments  
required

12. The Board shall cause a record to be kept of each member's contributions to the Fund, of the total period of service for which a member has credit in the Plan, and of the annual salary rates of each member while a member and of all other information necessary for the administrative, actuarial and financial requirements of the Plan.

Contribution,  
salary and  
service  
record

13.—(1) A member who has not attained sixty-five years of age and who ceases to be a member of the Plan before completing a continuous period of twenty-four months of membership and with credit in the Plan of less than two years is entitled to the refund provided by either or both of subsections (12) and (13), as the case requires.

Refunds  
before  
twenty-four  
months  
membership

(2) A member who has not attained sixty-five years of age and who ceases to be a member of the Plan after completing a continuous period of twenty-four months of membership or with two or more years of credit in the Plan and before completing ten years of continuous membership and with credit in the Plan for less than ten years is entitled to the refund provided by subsection (12).

Refund  
before ten  
years  
membership

(3) A member who, for reasons other than the member's death or disability, ceases to be a member of the Plan before attaining forty-five years of age and after completing a continuous period of ten or more years of membership or with ten or more years of credit in the Plan is entitled to the refund provided by subsection (12) if the member does not elect a deferred pension in respect of his or her credit in the Plan for service or membership prior to the 1st day of January, 1987.

Refund  
before age  
forty-five

(4) A member who has attained sixty-five years of age and who ceases to be a member of the Plan before completing a continuous period of twenty-four months of membership and with credit in the Plan of less than two years is entitled to the refund provided by either or both of subsections (12) and (13), as the case requires, and to the payment provided by subsection (14).

Refund after  
age sixty-five

(5) A member who has attained sixty-five years of age and who ceases to be a member of the Plan after completing a continuous period of twenty-four months of membership or with two or more years of credit in the Plan and before completing ten years of continuous membership and with credit in the Plan for less than ten years is entitled to the refund provided by subsection (12) and to the payment provided by subsection (14).

Idem

(6) When the cessation of membership referred to in subsection (1), (2), (4) or (5) occurs because of the death of the member, and the member is not survived by a child or children under eighteen years of age or by a spouse from whom the member is not living separate and apart at the member's death, the refund mentioned in those subsections, but not a payment described in subsection (14), shall be paid to the member's estate.

Refund on  
death where  
no survivor

(7) If a member dies while a member of the Plan and after completing a continuous period of ten or more years of membership or with ten or more years of credit in the Plan and, if the member is not survived by a child or children under eighteen years of age or by a spouse from whom the member is not living separate and apart at the member's death, the member's estate is entitled to be paid the refund provided by subsection (12).

Idem

(8) Despite subsections (1), (2), (4) and (5), if the cessation of membership referred to in those subsections occurs because of the death of the member, and the member is survived by a child or children under eighteen years of age or by a spouse from whom the member is not living separate

Refund on  
death to  
survivor



and apart, the spouse, or if there is no such spouse surviving, the child or children under eighteen years of age is or are, as the case requires, entitled,

- (a) if the death is a cessation of membership referred to in subsection (1) or (4), to the refund provided by either or both of subsections (12) and (13) and to the payment provided by subsection (14); or
- (b) if the death is a cessation of membership referred to in subsection (2) or (5), to the refund provided by subsection (12) and to the payment provided by subsection (14).

Refund when  
contributions  
exceed  
pension

(9) The amount, if any, by which the total of contributions made to the Fund by or on behalf of a member and the interest credited to the member under subsection 6 (6) exceeds the total payments made from the Fund to the member as a former member and as a survivor pension to the former member's spouse or child or children as a result of the former member's death shall be paid to the former member's estate.

Idem

(10) Despite subsection (9), if a former member who is in receipt of a pension dies survived by a child or children under eighteen years of age or by a spouse from whom the former member is not living separate and apart, and if none of them is entitled to a survivor pension under the Plan as a result of the death of the former member, the amount, if any, by which the aggregate of such of the amounts mentioned in subsections (12) and (13) as are applicable and of the additional amount mentioned in subsection (14) exceeds the total payments made from the Fund to the former member shall be paid to the surviving spouse, or if there is no surviving spouse, to the child or children, if any, of the former member under eighteen years of age at the former member's death.

Refund for  
disabled  
member

(11) Despite subsections (1), (2), (4) and (5), a member with credit in the Plan for less than ten years and with less than ten years of continuous membership in the Plan who ceases to be a member because of a mental or physical incapacity that is found by the Board to have rendered the member unable to perform his or her duties is entitled to be paid from the Fund the amount, if any, by which,

- (a) the aggregate of such of the amounts mentioned in subsections (12) and (13) as are applicable and of the additional amount mentioned in subsection (14),

exceeds,

- (b) the aggregate of the amount of the commuted value of any pension benefit for which the member is eligible and the amount of any refund to which the member is entitled under subsection (15).

Pre-1987  
service  
refund

(12) A person entitled to a refund provided by this subsection is entitled to be paid from the Fund an amount equal to the total of the contributions made to the Fund or a predecessor fund by or on behalf of the member in respect of employment or service for any period before the 1st day of January, 1987, together with the interest credited in the Fund to the member.

Post-1986  
service  
refund

(13) A person entitled to a refund provided by this subsection is entitled to be paid from the Fund an amount equal to the total of the contributions made to the Fund or a predecessor Fund by or on behalf of the member in respect of employment or service for any period after the 31st day of December, 1986, together with interest credited in the Fund to the member.

Additional  
payment

(14) A person entitled to a payment provided by this subsection is entitled to be paid from the Fund an additional amount equal to,

- (a) the amount of a refund to which the person is also entitled under either or both of subsections (12) and (13),

less,

- (b) any portion of the amount of the refund that is attributable to a payment made by the person under subsection 11 (2) or (5) or section 36 and interest credited to the member in respect thereof.

(15) The amount by which the total of the contributions, other than contributions made under subsection 11 (2) or (5) or section 36, made to the Fund by or on behalf of a member in respect of employment or service for any period after the 31st day of December, 1986 and the interest credited to the member in the Fund on those contributions exceeds one-half of the commuted value, excluding credit in the Plan for contributions made under subsection 11 (2) or (5) or section 36 in respect of employment or service after the 31st day of December, 1986, of the pension or deferred pension in respect of that employment or service to which the member is entitled on ceasing to be a member shall be refunded to the former member. 50 per cent rule

(16) The amount by which the total of the payment to the Fund made under subsection 11 (2) or (5) or section 36 and the interest credited to the member on that payment in accordance with the *Pension Benefits Act, 1987* exceeds the commuted value of the credit in the Plan that was purchased with that payment and that is included in a deferred pension that the member has elected to transfer under subsection 16 (6) shall be refunded to the former member. Excess past service payments refunded 1987, c. 35

(17) A payment or refund to be made under this section shall be paid in a lump sum payment. Lump sum payments

(18) A refund made under this section, other than subsection (15), reduces the member's or former member's credit in the Plan by the period of time in respect of which the refund is calculated. Credit reduced

(19) For the purpose of subsections (6), (7), (8) and (9), a child shall not be deemed to have attained eighteen years of age if the child would not, for the purpose of section 23, be deemed to have attained that age. Interpretation

14.—(1) Every member with ten or more years of credit or with ten or more years of continuous membership in the Plan who is found by the Board to be unable to perform his or her duties by reason of mental or physical incapacity is entitled to a disability pension under this section upon applying therefor to the Board and upon resigning from employment. Disability pension

(2) The Board may at any time review the case of any former member to whom a pension under subsection (1) is paid and, if, in the opinion of the Board, the former member has recovered sufficiently to perform his or her former duties, or to perform other duties in the public service, the Board shall report the case to the Human Resources Secretariat and to the ministry, agency or other organizational unit where the former member was employed immediately before his or her disability, and the former member shall be considered for re-employment. Review by Board

(3) If a former member to whom a pension under this section is paid is offered re-employment after the review referred to in subsection (2), the former member ceases to be entitled to receive payment of any further pension under this section whether or not the offer of re-employment is accepted. Re-employment

Other  
pension  
entitlement  
not affected

(4) The termination of the payment of a pension under this section in accordance with subsection (3) does not affect a former member's right to apply for a pension for which he or she is eligible under any other provision of the Plan.

Pension at  
age sixty-five

15.—(1) Every member who has twenty-four or more months of continuous membership in the Plan or who has two or more years of credit in the Plan and who ceases to be a member of the Plan on or after attaining sixty-five years of age is entitled to a pension computed in accordance with the Plan, except that, if the member has less than ten years of continuous membership and has credit in the Plan for less than ten years, the pension shall be computed only on his or her credit in the Plan for employment or service after the 31st day of December, 1986.

Pension at  
age sixty

(2) Every member who has at least twenty years of credit in the Plan and who ceases to be a member of the Plan on or after attaining sixty years of age is entitled to a pension computed in accordance with the Plan.

Ninety-year  
rule

(3) Every member who has credit in the Plan for a period of time that, when added to the member's age on the date the member ceases to be a member of the Plan, totals at least ninety years is entitled to a pension computed in accordance with the Plan.

Retirement  
from O.P.P.

(4) Every member who has at least thirty years of credit in the Plan, who is a member of the Ontario Provincial Police Force when he or she ceases to be a member of the Plan, and who ceases to be a member of the Plan on or after attaining fifty years of age is entitled to a pension computed in accordance with the Plan.

Payment

(5) Payment of a pension to which a member is entitled under this section shall commence in the month following the month when the member ceases to be a member of the Plan.

Deferred  
pension

16.—(1) Every member who has twenty-four or more months of continuous membership in the Plan or two or more years of credit in the Plan, who ceases to be a member, and who is neither in receipt of a pension provided for in section 14 nor entitled to a pension provided for in section 15 is entitled to a pension computed in accordance with the Plan, except that, if the member has less than ten years of continuous membership and has credit in the Plan for less than ten years, the pension shall be computed only on his or her credit in the Plan for employment or service after the 31st day of December, 1986.

Payment of  
pension  
under  
subs. (1)

(2) Payment of the pension provided for in subsection (1) shall commence in the month following the month when the former member will attain sixty-five years of age or, if the former member so elects in writing to the Board, payment of the pension shall, subject to the reductions mentioned in section 17, commence in the month following any month that is not earlier than the month when the former member will attain fifty-five years of age or later than the month when the former member will attain sixty-five years of age.

Pre-1966  
credit

(3) Every member who, on ceasing to be a member, has credit in the Plan that is equal to a period of time commencing before the 1st day of January, 1966 and ending with the day the member ceases to be a member, and who is neither in receipt of a pension provided for in section 14 nor entitled to a pension provided for in section 15, is entitled to a pension computed in accordance with the Plan.

Payment of  
pension  
under  
subs. (3)

(4) Payment of the pension provided for in subsection (3) shall commence in the month following the month when the former member will attain sixty years of age or, if the former member so elects in writing to the

Board, payment of the pension shall, subject to the reductions mentioned in section 17, commence in the month following any month that is not earlier than the month when the former member will attain fifty years of age or later than the month when the former member will attain sixty years of age.

(5) An election made under subsection (2) or (4) may, with the approval of the Board, be revoked by the member or former member and a fresh election in writing to the Board may be made if the commencement of payment therein provided for is neither earlier than the month following the month when the fresh election is delivered to the Board nor earlier than is permitted by subsection (2) or (4), whichever is applicable, and is not later than the latest month permitted by subsection (2) or (4), whichever is applicable, but no election may be revoked after payment of the pension is due to commence.

Revocation of election

(6) A former member who is entitled to a pension under subsection (1) or (3) and who has not attained fifty-five years of age in the case of a pension mentioned in subsection (1) or has not attained fifty years of age in the case of a pension mentioned in subsection (3) may require the commuted value of the pension to be paid, subject to section 43 of the *Pension Benefits Act, 1987* and to the regulations made under that Act,

Transfer of commuted value of pension  
1987, c. 35

- (a) to the pension fund of another pension plan that agrees to accept the payment;
- (b) into a retirement savings arrangement prescribed under the *Pension Benefits Act, 1987*; or
- (c) for the purchase for the former member of a deferred life annuity under which payments will not commence before the former member attains fifty-five years of age, if the pension the commuted value of which is paid is mentioned in subsection (1), or fifty years of age, if the pension the commuted value of which is paid is mentioned in subsection (3), and if the contract to purchase the annuity meets the requirements prescribed under the *Pension Benefits Act, 1987*.

17.—(1) Subject to subsections 15 (1) and 16 (1) and to the other subsections of this section, the annual amount of every pension payable to a former member is 2 per cent of the former member's average annual salary multiplied by the former member's years of credit in the Plan, including any fraction of a year, to a maximum of thirty-five years.

Computation of pension

(2) The annual amount of pension payable to a former member who, on ceasing to be a member, has credit in the Plan that is equal to a period of time commencing before the 1st day of January, 1966 and ending with the day the member ceases to be a member, who has not attained sixty-five years of age, and while the former member is not in receipt of a disability pension under the *Canada Pension Plan* shall be computed in accordance with subsection (1) as though the reference to sixty consecutive months in determining the former member's average annual salary were a reference to thirty-six consecutive months and shall be paid, subject to the reduction required by subsection (5), until the former member attains sixty-five years of age or receives a disability pension under the *Canada Pension Plan*, and upon the occurrence of either of those events, the former member's pension shall be recomputed in accordance with subsection (1) without reference to this subsection.

Pension for pre-1966 credit  
R.S.C. 1985, c. C-8

- (3) When a former member,
  - (a) who is in receipt of a pension attains sixty-five years of age or receives a disability pension under the *Canada Pension Plan*; or
- CPP reduction



- (b) who is not in receipt of a pension commences to receive a pension on or after attaining sixty-five years of age,

the annual amount of the pension computed under subsection (1) shall be reduced by the product of,

- (c) 0.7 per cent of the lesser of,

(i) the former member's average annual salary, and

(ii) the former member's average year's maximum pensionable earnings; and

- (d) the number of years, including any fraction of a year, of the former member's credit in the Plan for service on or after the 1st day of January, 1966 to a maximum of thirty-five years.

Early  
retirement  
reduction

(4) The annual amount of every pension provided for in subsection 16 (1) shall, after computation in accordance with subsection (1), be reduced by five-twelfths of 1 per cent thereof for each month in the period commencing with the first day of the month in which payment of the pension is to commence and ending with the last day of the month when the former member will attain sixty-five years of age, and when the reduction required by subsection (3) is calculated, the reduction required by this subsection applies only to the annual amount of pension payable after giving effect to the reduction required by subsection (3) and shall, if applicable, be recalculated on that basis.

Idem, pre-  
1966 credit  
R.S.O. 1980,  
c. 419

R.S.C. 1985,  
c. C-8

(5) The annual amount of every pension provided for in subsection 16 (3) shall, after computation in accordance with subsection (2), be reduced as required by the *Public Service Superannuation Act*, as it read on the 31st day of December, 1965, and the reduction shall continue until the former member attains sixty-five years of age or receives a disability pension under the *Canada Pension Plan* and, upon the occurrence of either of those events, the former member's pension shall be recomputed in accordance with subsection (1) and reduced as required by subsection (3), and the annual amount of pension payable after that reduction shall be further reduced by five-twelfths of 1 per cent thereof for each month in the period commencing with the first day of the month in which payment of the pension commenced and ending with the last day of the month when the former member attained sixty years of age.

Guarantee  
for pre-1966  
credit

(6) If the annual amount of pension computed in accordance with subsection (1),

- (a) less the reduction required by subsection (3) and, if applicable, subsection (5); and

- (b) plus,

(i) the annual amount of any disability pension to the former member from the *Canada Pension Plan*, or

(ii) the annual amount of pension that the former member would have received from the *Canada Pension Plan* if that pension commenced only on the former member's attaining sixty-five years of age,

other than the part of that pension derived from contributions made to the *Canada Pension Plan* after the former member ceased to be a member of the Plan,



that is payable to a former member who,

- (c) has credit in the Plan that is equal to a period of time commencing before the 1st day of January, 1966 and ending with the day the former member ceased to be a member of the Plan; and
- (d) has attained sixty-five years of age or is receiving a disability pension under the *Canada Pension Plan*,

is less than the annuity or annual amount of allowance that would be payable to the former member under the *Public Service Superannuation Act*, as it read on the 31st day of December, 1965, in respect of the former member's credit in the Plan, the amount of the difference shall be added to the annual amount of the pension computed in accordance with subsection (1) that is payable after making the reductions required by subsection (3) and, if applicable, subsection (5).

R.S.O. 1980,  
c. 419

(7) There shall be excluded from the period of time mentioned in subsection 16 (3) and subsections (2) and (6) any period of time for which a former member has credit in the Plan and for which the former member was employed by a person who did not, during or after that period of time, contribute to the Fund or a predecessor fund under the Plan or the *Public Service Superannuation Act*.

Exception to  
guarantee

(8) If, on the first day of the month when payment of the pension to a former member is to commence, the former member has a spouse from whom the former member is not living separate and apart, the annual amount of the former member's pension computed in accordance with this section, other than this subsection, shall be reduced in such manner as the Board approves to reflect the following rules:

Reduction  
for survivor  
pension

1. Determine the present value of the pension payable to the former member and the spouse on the assumption that a survivor pension is payable to the spouse equal to one-half of the former member's pension computed in accordance with this section, other than this subsection, that the survivor pension is payable for the lifetime of the surviving spouse, and that, if the spouse was not the spouse of the former member when the former member ceased to be a member of the Plan, no survivor pension is payable to the spouse.
2. Determine the reduction in the amount of the former member's annual amount of pension computed in accordance with this section, other than this subsection, that is required in order to provide to the spouse of the former member, at the present value determined under paragraph 1, the survivor pension provided by subsection 19 (1).
3. Reduce the annual amount of the former member's pension computed in accordance with this section, other than this subsection, by the amount of the reduction determined under paragraph 2.

(9) If a computation under this section involves a part of a year, the part shall be determined on the basis of full months, and,

Computation  
of partial  
year

- (a) any part of a month that is less than fifteen days shall be disregarded; and
- (b) any part of a month that is fifteen days or more shall be deemed to be a month.

18.—(1) The Board is not required to commence payment of a pension to which a person is entitled under the Plan until a written application is delivered to the Board setting out such information as is prescribed and

Application  
for pension

such information as is, in the opinion of the Board, necessary to establish the person's entitlement to the pension and the amount thereof.

Payment

(2) Unless otherwise expressly provided in this Plan, a pension,

(a) is payable in monthly instalments for life; and

(b) ceases to be payable after the month when the person in receipt of the pension dies or entitlement to payment of the pension ceases.

Commutation  
of pension

(3) If a person is entitled to be paid a pension the annual amount of which, before the reductions mentioned in subsections 17 (4) and (5), is not more than,

R.S.C. 1985,  
c. C-8

(a) 2 per cent of the Year's Maximum Pensionable Earnings as prescribed by the *Canada Pension Plan*; or

1987, c. 35

(b) such greater amount as is permitted by the *Pension Benefits Act*, 1987,

in the year when the member for whose credit in the Plan the pension is payable ceased to be a member of the Plan, the Board may pay the commuted value of the pension to the person.

Pension to  
surviving  
spouse

19.—(1) Subject to subsections (2) and (3), if, on the first day of the month in which payment of a pension to a former member is to commence, the former member has a spouse from whom the former member is not living separate and apart, the spouse is, if he or she survives the death of the former member, entitled to be paid for his or her lifetime an annual amount of pension equal to 60 per cent of the annual amount of pension that the former member is entitled to receive in the month when the former member dies, and payment thereof shall commence in the month following the month when the former member dies.

Death before  
age sixty-five

(2) If a survivor pension under subsection (1) or subsection 21 (1) is payable as the result of the death of a former member before attaining sixty-five years of age and before the reduction of his or her pension in accordance with subsection 17 (3), the annual amount of pension on which the survivor pension is based shall be reduced in accordance with that subsection as though the former member had attained sixty-five years of age immediately before his or her death.

Waiver of  
survivor  
pension

(3) Despite subsection (1), a member or former member and the spouse of the member or former member from whom the member or former member is not living separate and apart,

(a) may elect that the spouse receive a survivor pension under subsection (1) of 50 per cent rather than 60 per cent if the member or former member and the spouse are not or were not living separate and apart when the member or former member ceases or ceased to be a member of the Plan; or

(b) may waive the spouse's entitlement to a survivor pension under subsection (1) if the member or former member and the spouse are or were living separate and apart when the member or former member ceases or ceased to be a member of the Plan,

by delivering to the Board within twelve months prior to the month when payment of the pension to the member or former member is to commence a written direction in the form approved by the Board and signed by both of them or a certified copy of a domestic contract, within the meaning of Part IV of the *Family Law Act*, 1986, containing the election or waiver.

(4) Persons who have delivered a waiver or election under subsection (3) may jointly cancel the waiver or election by written notice of cancellation signed by them and delivered to the Board before the month when the pension is to commence to be paid to the member or former member.

Revocation  
of waiver or  
election

(5) The reduction required by subsection 17 (8) shall not be made if an election or waiver made as permitted by subsection (3) is in force in the month when the pension is to commence to be paid to the member or former member.

Reduction  
not to be  
made

(6) On the death of a spouse to whom a survivor pension is paid under this section, section 20 or 23, an annual amount of pension equal to that survivor pension is payable to or among such of the child or children of the former member on whose death the survivor pension became payable to the spouse as are, at the death of the spouse, under eighteen years of age until each child attains that age or dies under that age, and the share of the children who attain that age or die under that age accrues to the child or children, if any, remaining under that age.

Survivor  
pension to  
child on  
death of  
spouse

20.—(1) The amount of the survivor pension payable under section 19 may be increased to 65 per cent, 70 per cent or 75 per cent of the pension of the former member, after taking into account the reduction required by subsection (4), by a written direction signed by the member or former member on whose pension the survivor pension is based specifying the percentage to which the survivor pension is to be increased, and the direction shall be delivered to the Board at least two years prior to the month when payment of the pension to the member or former member is to commence.

Increased  
survivor  
pension

(2) The Board shall accept a direction mentioned in subsection (1) that is delivered to the Board after the time mentioned in that subsection and before the month when the pension is to commence to be paid to the member or former member if the Board is satisfied that the member or former member is in good health having regard to his or her age.

Idem

(3) A direction delivered in accordance with subsection (1) or accepted in accordance with subsection (2) is of no effect if the member who gives it dies while a member of the Plan.

When  
direction not  
valid

(4) The annual amount of pension computed in accordance with section 17 payable to a former member who has given a valid direction delivered in accordance with subsection (1) or accepted in accordance with subsection (2) shall be actuarially reduced in a manner approved by the Board to reflect the increased survivor pension specified in the direction and the increased survivor pension shall be paid in lieu of that provided for in section 19.

Actuarial  
reduction of  
pension

(5) A person who gives a direction mentioned in subsection (1) or (2) may revoke the direction by a written revocation delivered to the Board before the month when payment of the person's pension is to commence.

Revocation  
of direction

21.—(1) Subject to subsection 19 (2), a former member who, after commencing to receive a pension and when the former member has no spouse entitled to a survivor pension under section 19, becomes the spouse of a person who would not be entitled on the death of the former member to a survivor pension under section 19 may in writing direct the Board to pay to the person, if he or she survives the death of the former member, a survivor pension for life of 50 per cent, 55 per cent, 60 per cent, 65 per cent, 70 per cent or 75 per cent of the pension received by the former member immediately before his or her death.

Post-  
retirement  
marriage

(2) A direction mentioned in subsection (1) must be delivered to the Board.

Time limit

- (a) within ninety days after the date on which the former member became the spouse of the person to whom the survivor pension is directed to be paid; or
- (b) if immediately before the person becomes the spouse of the former member there is a child of the former member who would be entitled on the former member's death to receive a pension, within ninety days after the date the child ceases to be entitled to receive the pension.

Exception

(3) The Board may accept a direction mentioned in subsection (1) and delivered after the time mentioned in subsection (2) if the Board is satisfied that the former member giving the direction is in good health having regard to his or her age.

Actuarial  
reduction of  
pension

(4) The annual amount of pension payable to a former member who has given a valid direction in accordance with this section shall be actuarially reduced in a manner approved by the Board to reflect the survivor pension directed to be paid and, subject to subsection (5), the survivor pension shall be paid in the percentage specified in the direction to the spouse if he or she survives the death of the former member.

Prior interest  
of child

(5) A survivor pension under this section shall not be paid while there is a child of the deceased former member entitled to receive a pension as a result of the death of the former member.

Survivor  
pension on  
death before  
payment of  
pension

**22.—**(1) If a member who has twenty-four or more months of continuous membership or two or more years of credit in the Plan,

- (a) dies while a member of the Plan; or
- (b) dies after ceasing to be a member of the Plan and before the beginning of the month when payment of his or her pension is to commence,

the commuted value, as determined by the Board, of the member's or former member's pension benefit determined immediately prior to his or her death and on the basis only of his or her credit in the Plan for employment or service after 1986 is payable,

- (c) to the spouse of the member or former member from whom the member or former member is not living separate and apart;
- (d) if no payment under clause (c) can be made, or if the member or former member has no spouse who survives the date of death of the member or former member, to the beneficiary designated in accordance with this section by the member or former member; or
- (e) if no payment can be made under clause (c) or (d), to the estate of the member or former member.

Payment to  
spouse

(2) Subject to subsection (3), the commuted value payable under subsection (1) to the spouse of a member or former member shall be paid in the form of an immediate pension for the lifetime of the spouse, and the commuted value of the pension so payable shall be equal to the commuted value payable under subsection (1), and payment thereof shall commence in the month following the month when the member or former member dies.

Election by  
spouse

(3) The spouse to whom an immediate pension is payable under subsection (2) may, in writing in the approved form delivered to the Board in the time fixed by the Board, elect to receive the commuted value payable under subsection (1) in the form of,



- (a) a single lump sum payment equal to the commuted value payable under subsection (1); or
- (b) a deferred pension the commuted value of which is equal to the commuted value payable under subsection (1).

(4) A member or former member and his or her spouse may, by written waiver in the approved form delivered to the Board in the time fixed by the Board, waive the spouse's entitlement under subsection (1) and, while the waiver is in effect, that subsection shall be applied as if the member or former member does not have a spouse on the date of the death of the member or former member.

Waiver of spouse's entitlement

(5) The designation of a beneficiary for the purpose of this section shall be made and delivered to the Board in such form and manner as the Board requires.

Designation of beneficiary

**23.—**(1) If a member who has ten or more years of credit in the Plan or has ten or more years of continuous membership in the Plan dies while a member of the Plan, or dies after ceasing to be a member of the Plan and before the beginning of the month when payment of his or her pension is to commence, an annual amount of pension equal to one-half of the member's or former member's pension computed in accordance with section 17 as though the member or former member had attained sixty-five years of age and on the basis only of his or her credit in the Plan for employment or service before 1987 is payable,

Survivor pension for pre-1987 credit

- (a) to the spouse of the member or former member from whom the member or former member, at his or her death and at the cessation of his or her membership in the Plan, was not living separate and apart; or
- (b) if no payment under clause (a) can be made, to or among such of the child or children of the member or former member as are, at the death of the member or former member, under eighteen years of age until each child attains that age or dies under that age, and the share of each of the children who attains that age or dies under that age accrues to the child or children, if any, remaining under that age.

(2) Payment of a survivor pension under this section shall commence in the month following the month when the member or former member dies, and the survivor pension payable to a spouse under this section is payable for the life of the spouse.

Payment

(3) For the purpose of this section and subsection 19 (6), a child who has attained eighteen years of age shall be deemed not to have attained that age if, since attaining that age, the child has been, in the opinion of the Board, continuously in full-time attendance at either or both of,

Exception for higher education

- (a) a secondary school; or
- (b) for five years following secondary school, a post-secondary educational institution that is recognized as such by the Board.

**24.—**(1) In the formulas in this section,

Inflation adjustment

"A" is the carry forward determined for the immediately preceding year,

"B" is the basic ratio for the year,

"C" is the adjustment ratio for the year,



“D” is the basic ratio for the year next following the year when the member for whose credit in the Plan the pension in respect of which the formula is applied is payable ceased to be a member of the Plan, and shall be calculated to a maximum of 1.080 or to a minimum of 1.000, and

“E” is the number of full months in the year that are after the month in the year when the member for whose credit in the Plan the pension in respect of which the formula is applied is payable ceased to be a member of the Plan.

#### Definitions

(2) In this section,

“accumulated adjustment ratio”, for the pension of a person, means the product of the multiplication of all adjustment ratios for the years in the period commencing with the year when the member for whose credit in the Plan the pension is payable ceased to be a member of the Plan and ending with the year for which the accumulated adjustment ratio is being determined;

“adjustment ratio”, for the pension of a person, means,

- (a) for any year before the year 1976 and for the year when the member for whose credit in the Plan the pension is payable ceased to be a member of the Plan, 1.000,
- (b) if the member for whose credit in the Plan the pension is payable ceased to be a member of the Plan in or after the year 1975, for the year next following the year when the member for whose credit in the Plan the pension is payable ceased to be a member of the Plan, the ratio determined by the formula

“ $[(D - 1.000) \times E / 12] + 1.000$ ”, and

- (c) for the later of the year 1976 and the second year after the year when the member for whose credit in the Plan the pension is payable ceased to be a member of the Plan and for any subsequent year, the ratio determined by the formula “ $A + B$ ” calculated to a maximum of 1.080 or to a minimum of 1.000;

“basic ratio”, for a year, means the ratio expressed to three decimal places that the average for the Consumer Price Index over the last twelve months of the twenty-four-month period ending with the 30th day of September in the immediately preceding year bears to the average for the Consumer Price Index over the first twelve months of that period;

“carry forward”, with respect to the pension of a person, means,

- (a) for any year before the year 1976, for the year when the member for whose credit in the Plan the pension is payable ceased to be a member of the Plan and for the year next following that year, nil, and
- (b) for the later of the year 1976 and the second year following the year when the member for whose credit in the Plan the pension is payable ceased to be a member of the Plan and for any subsequent year, the positive or negative number determined by the formula “ $A + B - C$ ”;

“Consumer Price Index” means the Consumer Price Index for Canada as published by Statistics Canada under the authority of the *Statistics Act* (Canada);

“member” includes a contributor within the meaning of the *Public Service Superannuation Act* or a predecessor Act; R.S.O. 1980, c. 419

“pension” means a pension to which a person is entitled from the Plan other than the adjustment for inflation provided by this section, and an allowance, annuity, deferred annuity or other periodic payments to which a person has become entitled under the *Public Service Superannuation Act* or a predecessor Act; R.S.O. 1980, c. 419

“Plan” includes the pension plan established under the *Public Service Superannuation Act* and any predecessor Act.

(3) The annual amount of pension payable to a person from the Fund shall, commencing with the year when payment of the pension is to commence and in each subsequent year that the pension continues to be payable, be adjusted for inflation by multiplying the annual amount of the pension by the accumulated adjustment ratio for the pension of the person for that year, and the amount by which the pension thus adjusted exceeds the annual amount of pension before the adjustment in each year shall be paid to the person entitled to receive the pension for which it is calculated at the same times, in the same manner and subject to the same terms and conditions as apply to the pension in respect of which it is paid. Payment of inflation adjustment

(4) The ratio determined for the year 1990 under the *Superannuation Adjustment Benefits Act* does not apply to a pension to which this section applies. Ratio not to apply R.S.O. 1980, c. 490

25.—(1) A full-time employee who is permitted to continue the duties of his or her position as a part-time employee in accordance with this section for the final years of his or her employment in the public service is entitled to have his or her pension determined in accordance with this section if the employee meets all of the conditions set out in subsection (2) and gives the notice of election required by subsection (3). Pre-retirement part-time employment

(2) The conditions referred to in subsection (1) are, Conditions

(a) that the employee's part-time employment must be and continue to be,

(i) in a position that requires regular employment for at least fourteen hours per week or nine full days in each four weeks, or

(ii) full-time employment in a classified position in the civil service for at least one-third of each twelve-month period or part thereof following the giving of the notice required by subsection (3) and before the employee's retirement on the date provided for in the notice;

(b) that the employee must not be employed as a regular full-time employee in the public service at any time after giving the notice required by subsection (3) and before receiving a pension under the Plan;

(c) that during the period of part-time employment specified by the employee in the notice given in accordance with subsection (3), contributions are made to the Fund by the employee and the employer on the basis of the salary payable for full-time employment in the position held by the employee immediately before the giving of the notice; and

- (d) that the employee's deputy minister must approve in writing the change from full-time to part-time employment proposed by the employee.

## Notice

(3) A full-time employee who wishes to contribute to the Fund on the basis provided for in this section shall give to his or her deputy minister a written notice signed by the employee stating,

- (a) that the employee intends to retire from employment in the public service not later than five years after the day on which the notice is given;
- (b) that the employee wishes to perform the duties of his or her position on a part-time basis until retirement from employment; and
- (c) that the employee wishes to continue to contribute to the Fund on the basis of his or her salary as a full-time employee in the position.

## Pension on basis of full-time employment

(4) Despite the definition of "annual salary rate" and "credit", while an employee continues to comply with the conditions described in subsection (2),

- (a) contributions shall be made to the Fund by the employee and the employer on the basis of the salary payable for full-time employment in the position held by the employee immediately before the giving of the notice;
- (b) the employee's annual salary rate shall be that on which contributions to the Fund are paid; and
- (c) the employee shall be given credit in the Plan on the basis of full-time employment in the position in which the employee is employed part-time.

## Resuming full-time employment

(5) If an employee who contributes to the Fund in accordance with this section resumes full-time employment in the public service after giving the notice required by subsection (3) and before receiving his or her pension, the employee's contributions to the Fund and credit in the Plan shall be recomputed without reference to subsection (4).

## Excess contributions refunded

(6) Contributions to the Fund under this section in excess of those required after the application of subsection (5) shall be refunded to the person who paid them.

## Interpretation R.S.O. 1980, c. 418

(7) In this section, "public service" has the same meaning as in the *Public Service Act*.

## Re-employment of pensioner

**26.—(1)** If a former member who is receiving a pension is, in the opinion of the Board, re-employed or engaged in any capacity by an employer who contributes to the Fund, any pension that the former member is entitled to receive during the re-employment or engagement shall, for any period of three months commencing on the 1st day of January, April, July or October in any year during which the former member is so re-employed or engaged, be reduced by the amount by which the sum of,

- (a) three times the monthly salary paid to the former member in that period of three months; and
- (b) the pension payable to the former member in that period of three months if this section were not applicable to the former member,

exceeds the product of three times the monthly salary payable to the former member for the last full month of employment before he or she ceased to be a member of the Plan.

(2) Any period of re-employment or engagement referred to in subsection (1) for which a person may and does contribute to the Fund shall be added to the person's credit in the Plan, and any pension payable on termination of the re-employment or engagement shall be recalculated to take into account the additional credit and any pension earlier received by the person. Idem

(3) Despite subsection (1), the pension of a person who is appointed by the Lieutenant Governor in Council for a period not exceeding six months at a time to provide to the Crown the professional, expert or technical knowledge of the person in a special capacity required by the Crown shall not be reduced if the appointment so provides. Re-employment in expert capacity

27.—(1) Every transaction that purports to assign, charge, anticipate or give as security the interest, or any part thereof, of any person in the Fund or in any pension or other sum payable out of the Fund is void. Void transactions

(2) The interest of any person in the Fund or in any pension or other sum payable out of the Fund is exempt from execution, seizure or attachment. Exemption from seizure

(3) Subject to section 52 of the *Pension Benefits Act, 1987*, subsections (1) and (2) do not apply to prevent the operation of any order under the *Family Law Act, 1986* or the provisions of a domestic contract, as defined in Part IV of that Act. Order or separation 1987, c. 35 1986, c. 4

(4) Subsections (1) and (2) do not apply to prevent execution, seizure or attachment in satisfaction of an order for support or maintenance enforceable in Ontario to a maximum of one-half of the interest of any person in the Fund or in any pension or other sum payable out of the Fund. Order for support or maintenance

(5) Subsection (4) applies to orders of support or maintenance enforceable in Ontario whether made before or after the 31st day of December, 1989. Application of subs. (4)

(6) Despite subsections (1) and (2), if a person entitled to a refund or a lump-sum payment from the Fund requests the Board in writing to have the refund or payment paid, Payment into other funds

(a) into another registered pension plan;

(b) into a registered retirement savings plan that meets the requirements of the *Income Tax Act* (Canada); R.S.C. 1952, c. 148

(c) to an insurance company to purchase an immediate or deferred life annuity; or

(d) into a pension plan approved by the Board,

the refund or payment shall be so paid.

28.—(1) A payment to be made under the Plan to a member's estate may be made to the executor or administrator of the member's estate or to the person or persons who appear to the Board to be properly acting in the administration or distribution of the member's estate or, if no executor or administrator or other person acting in the administration or distribution of the member's estate can be ascertained to the satisfaction of the Board, the Payment to estate



payment may be paid into the Supreme Court of Ontario to the credit of the member's estate.

Missing  
beneficiary

(2) If, after the death of a person, no spouse or child or designated beneficiary of that person can be found entitled to receive a pension on the person's death, and the Board is satisfied that reasonable inquiries have been made to find the spouse or child or designated beneficiary, and more than one year has passed since the death of the person, the Board may, despite any other provision of the Plan, direct that the money that would be payable under the Plan to the person's estate if the person had died leaving no surviving child or spouse or designated beneficiary entitled to be paid a pension on the person's death be paid to the person's estate upon such terms and conditions as the Board determines.

Beneficiary  
later found

(3) If the spouse or child or designated beneficiary referred to in subsection (2) is subsequently found and a claim is made for any money payable under the Plan, the Board may direct that such money, less any money paid under subsection (2), be paid to the spouse or child or designated beneficiary, as the case may be.

Board to be  
corporation

29.—(1) The Public Service Superannuation Board is continued under the name of the Public Service Pension Board and the Board is constituted a corporation without share capital.

Application  
of  
R.S.O. 1980,  
c. 95

(2) The *Corporations Act* does not apply to the Board.

Board  
members

(3) The Board shall be composed of at least four members appointed by the Lieutenant Governor in Council, one of whom shall be representative of the members of the Plan who are members of a union with whom the employer has a collective agreement.

Term of  
office

(4) Each appointment or reappointment of a Board member shall be for such term, not exceeding three years, as the Lieutenant Governor in Council specifies.

Idem

(5) If the Lieutenant Governor in Council considers it appropriate and desirable, members may be appointed to the Board because of their expertise in the management, investment or administration of pension plans or in order to represent on the Board, subject to the requirements of the *Pension Benefits Act, 1987*, the concerns of the Crown, of members required to contribute to the Fund or of persons receiving pensions under the Plan.

1987, c. 35

Reappointment

(6) A member whose appointment has expired may be reappointed to the Board, but no reappointment shall be for a term that, when added to the member's current unbroken period of membership, exceeds six consecutive years of membership.

Chairperson  
and vice-  
chairperson

(7) From the members of the Board, the Lieutenant Governor in Council may designate a chairperson and one or more vice-chairpersons for a term not to exceed two years or such lesser period as the person remains a member of the Board and, if the Lieutenant Governor in Council does not designate a chairperson or vice-chairperson within one month after the position becomes vacant, the members of the Board shall elect one of them to be chairperson, and may elect one or more of them to be vice-chairperson, but the term for which any chairperson or vice-chairperson is elected shall not exceed two years or the remaining period of his or her appointment to the Board, whichever is shorter.



**30.** The Lieutenant Governor in Council shall establish the remuneration or range of remuneration to be paid to a member of the Board and to the chairperson and vice-chairperson, but no member of the Board who is employed in the public service of Ontario shall be paid any remuneration other than reimbursement for expenses actually incurred in the performance of his or her duties as a member of the Board or an honorarium in recognition of salary lost by the public servant for attendance at a meeting of the Board.

Remuneration

**31.—(1)** It is the duty and responsibility of the Board to administer the Plan and manage the Fund in accordance with this Act, the Plan and the *Pension Benefits Act, 1987*.

Duty of Board

1987, c. 35

(2) The Board shall appoint or employ an actuary, an auditor and such officers, employees, advisers, experts and other persons as are required to carry out the duties and responsibilities of the Board.

Employment of officers and others

(3) The Board may make rules and by-laws for the administration and management of the Plan and the Fund and for the conduct of the affairs of the Board and committees of the Board, and may, for such period as the Board determines and on such terms and conditions as the Board considers appropriate, assign or delegate to any officer, employee, member or committee of the Board or other person retained by the Board the performance or exercise of any of the duties or responsibilities of the Board as the Board considers necessary or desirable.

Board may make rules

(4) Without restricting the generality of subsection (3), the Board may make rules,

Idem

- (a) prescribing the proofs to be furnished as a condition to the payment of a pension;
- (b) excluding from salary on which contributions to the Fund are based any payment to a member that is, in the opinion of the Board, not a regular and usual part of the normal remuneration for the member's employment or is a payment in the nature of a special consideration or employee benefit;
- (c) approving forms and providing for their use; and
- (d) requiring members of the Plan, recipients of pensions under the Plan or applicants for pensions under the Plan to furnish information to or for the use of the Board, and prescribing the form thereof and the information to be furnished.

**32.** The Board has and may exercise all of the powers and capacities of a natural person that are considered by the Board to be necessary or incidental to the carrying out of its duties and responsibilities under this Act and the Plan and, in particular, the Board may,

Powers of Board

- (a) contract and be contracted with and sue and be sued;
- (b) acquire by purchase, lease or otherwise any real or personal property for its own use or as an investment of the Fund, and may sell, lease or otherwise dispose of all or any part of its property in its discretion;
- (c) participate with others as a partner or as a member of a syndicate or association of persons in the acquisition, holding, management or disposition of any property by way of investment or otherwise;

- (d) determine the rate of remuneration and the employee benefits and perquisites for its employees and the conditions of employment under which they are employed;
- (e) with the approval of the Management Board of Cabinet, enter into such arrangements as are considered necessary by the Board for the purchase from the Crown of the services of any employee or ministry of the Crown, or for the use of any facilities or equipment belonging to the Crown, that may assist the Board in the management or administration of the Plan or the Fund; and
- (f) with the approval of the Lieutenant Governor in Council, enter into an agreement to administer any other pension plan or fund or administer a benefit plan to provide health or medical or other benefits to persons who have ceased to be members of the Plan and are entitled to a pension, and to recover, where appropriate, the costs of such administration from that plan or fund.

Committees      **33.—**(1) The Board may establish such committees as are considered necessary or desirable.

Committee may delegate      (2) A committee established by the Board may, with the approval of the Board and in accordance with the policy established by the committee or the Board, delegate to an officer or employee of the Board any of the duties and responsibilities of the committee, including those delegated to the committee by the Board.

Quorum      **34.** The quorum for any meeting of the Board or a committee of the Board shall be at least a majority of the members of the Board or committee.

Expenses      **35.** The expenses of the operation of the Board, the administration of the Plan and the management of the Fund shall be paid out of the Fund.

Reciprocal transfer agreements continue to apply      **36.—**(1) Any agreement in writing between a person and the Minister or the Crown for the reciprocal transfer of pension credits between the Public Service Superannuation Fund established under the *Public Service Superannuation Act* and another pension plan continues to apply to the Plan with all necessary modifications.  
R.S.O. 1980, c. 419

Transfer to other plan of credit in other plans      (2) If the Board enters into a written agreement with an employer to whom the Plan does not extend for the transfer to the Plan of credit for a person's service with that employer, the person shall, on becoming a member and requesting a transfer of credit to the Plan in accordance with the agreement, pay or cause to be paid into the Fund the amount provided for in the agreement for the purchase of the credit that is being transferred.

Transfer to other plan of credit in Plan      (3) If the Board enters into a written agreement for the transfer from the Plan to another pension plan registered under the *Income Tax Act* (Canada) of credit in the Plan in respect of members who become members of the other plan, the Board shall, at the request of a member transferring credit from the Plan in accordance with the agreement, pay from the Fund to the Plan to which the member's credit is being transferred the amount provided for in the agreement for the purchase of credit for the member in the other plan.  
R.S.C. 1952, c. 148

Transfer agreements prevail      (4) Subsections (1) to (3) apply despite section 11 or 13.

(5) The Board shall not enter into an agreement mentioned in sub-section (2) or (3) until the agreement is approved by the Lieutenant Governor in Council. Approval of agreements

37. After the close of each fiscal year, the Board shall submit to the Minister a report for the fiscal year just ended of the financial and other affairs of the Plan and the Fund, and the Minister shall submit the report to the Lieutenant Governor in Council and shall then lay the report before the Legislative Assembly if it is in session or, if not, at the next session. Annual report

38.—(1) In the reports to the Minister under section 37, the Board shall identify, Report re O.P.P. early retirement benefit

- (a) the additional cost to the Plan of the pension provided to members of the Ontario Provincial Police Force by subsection 15 (4) over the cost of the pension or deferred pension that would be payable without that subsection; and
- (b) the financial benefit to the Plan from the contributions of members of the Ontario Provincial Police Force under subsection 6 (2), from the employer's contributions made to match contributions under that subsection, and from the return reasonably attributable to the investment of the contributions and of the proceeds received by the Fund from the transfers under subsections 7 (2) and (3) of this Act.

(2) The Board shall also indicate in its reports the sufficiency of the financial benefits referred to in clause (1) (b) to meet the additional costs referred to in clause (1) (a) and whether those additional costs for pensions that are being paid at the end of the year for which the report is made have been met by the financial benefits that have then accrued to the Fund. Idem

39.—(1) Each employee of the Board and his or her heirs, executors and administrators shall be indemnified and saved harmless by the Board from and against all costs, charges and expenses sustained or incurred in or about any action, suit, proceeding or claim against him or her for any act, omission, deed, matter or other thing made, done or permitted or omitted to be made or done in or about the execution of the duties of his or her employment by the Board, and every payment made for the indemnification is an administrative expense of the Board. Indemnification

(2) Indemnification under subsection (1) does not extend to the act or omission to act of any person that was done or omitted to be done dishonestly or in bad faith. Limitation

## SCHEDULE 2

## INTERIM PAYMENTS OF UNFUNDED LIABILITY

	<i>Date of payment</i>	<i>Amount of payment</i>
1.	January 1, 1990	\$7,283,000
2.	February 1, 1990	7,316,000
3.	March 1, 1990	7,349,000
4.	April 1, 1990	7,381,000
5.	May 1, 1990	7,414,000
6.	June 1, 1990	7,448,000
7.	July 1, 1990	7,481,000
8.	August 1, 1990	7,514,000
9.	September 1, 1990	7,548,000
10.	October 1, 1990	7,582,000
11.	November 1, 1990	7,616,000
12.	December 1, 1990	7,650,000
13.	January 1, 1991	7,684,000
14.	February 1, 1991	7,718,000
15.	March 1, 1991	7,753,000
16.	April 1, 1991	7,787,000
17.	May 1, 1991	7,822,000
18.	June 1, 1991	7,857,000
19.	July 1, 1991	7,892,000
20.	August 1, 1991	7,928,000
21.	September 1, 1991	7,963,000
22.	October 1, 1991	7,999,000
23.	November 1, 1991	8,034,000
24.	December 1, 1991	8,070,000
25.	January 1, 1992	8,106,000
26.	February 1, 1992	8,143,000
27.	March 1, 1992	8,179,000
28.	April 1, 1992	8,216,000
29.	May 1, 1992	8,252,000
30.	June 1, 1992	8,289,000
31.	July 1, 1992	8,326,000
32.	August 1, 1992	8,364,000
33.	September 1, 1992	8,401,000
34.	October 1, 1992	8,439,000
35.	November 1, 1992	8,476,000
36.	December 1, 1992	8,514,000

# Bill 37

## An Act to amend the Assessment Act

The Hon. B. Grandmaître  
*Minister of Revenue*



*1st Reading*      June 21st, 1989  
*2nd Reading*  
*3rd Reading*  
*Royal Assent*



## EXPLANATORY NOTES

The Bill provides for a reduction in the business assessment of land used by distillers. For the 1989 taxation year, the business assessment is reduced from 140 per cent to 100 per cent of the assessed value of the land. For the 1990 and subsequent taxation years, the business assessment is further reduced to 75 per cent of the assessed value. The Bill provides for compensating grants to the affected municipalities.

The Bill also provides for the release of assessment information on comparable properties, and permits the disclosure of information to municipalities and school boards to assist in their planning.

**SECTION 1.** This amendment reduces the business assessment payable by distillers for the 1989 taxation year to 100 per cent of the assessed value of the land and to 75 per cent for the 1990 and subsequent taxation years.

**SECTION 2.** This section provides authority for the Minister of Municipal Affairs to make grants in 1989, 1990 and 1991 to compensate municipalities for revenue losses resulting from the reduction in business assessment payable by distillers.

**SECTION 3.** This section provides authority for the Minister of Municipal Affairs to make further grants in 1992, 1993 and 1994 to compensate those municipalities in which the losses of revenue resulting from the business assessment reduction for distillers are considered by the Minister to be significant.

**SECTION 4.—Subsection 1.** This amendment extends the existing information disclosure provisions to employees of school boards in addition to assessors and municipal employees.

**Subsection 2.** This section will permit assessors to disclose information to ratepayers to assist them in determining the fairness of their assessments. Actual income and expense information on individual properties may not be disclosed. Municipalities and school boards will be supplied with assessment information to assist them for planning purposes, but not actual income and expense information on individual properties.

# Bill 37

1989

## An Act to amend the Assessment Act

HER MAJESTY, by and with the advice and consent of the Legislative Assembly of the Province of Ontario, enacts as follows:

**1.** Clause 7 (1) (a) of the *Assessment Act*, being chapter 31 of the Revised Statutes of Ontario, 1980, as re-enacted by the Statutes of Ontario, 1986, chapter 69, section 3, is repealed and the following substituted therefor:

- (a) The business of a distiller for a sum equal to,
  - (i) for the 1989 taxation year, 100 per cent of the assessed value of the land so occupied or used, exclusive of the portion of the land occupied or used for the distilling of alcohol solely for industrial purposes, and for a sum equal to 75 per cent of the assessed value as to such last-mentioned portion, and
  - (ii) for the 1990 and subsequent taxation years, 75 per cent of the assessed value of the land so occupied or used.

**2.** In each of the years 1989, 1990 and 1991, the Minister of Municipal Affairs may make grants, upon such terms and conditions as the Minister considers necessary, to any municipality to compensate the municipality for a loss of tax revenue resulting from the reduction in the rate of business assessment provided by clause 7 (1) (a) of the *Assessment Act*, as re-enacted by section 1 of this Act.

Grants by  
Minister of  
Municipal  
Affairs

**3.** In addition to any grants that may have been paid pursuant to section 2, in each of the years 1992, 1993 and 1994, the Minister of Municipal Affairs may, where the Minister considers that the loss of revenue has been sufficiently significant, make further grants, upon such terms and conditions as the Minister considers necessary, to any municipality to further compensate the municipality for a loss in revenue resulting from the reduction in the rate of business assessment provided

Additional  
grants

by clause 7 (1) (a) of the *Assessment Act*, as re-enacted by section 1 of this Act.

**4.—(1)** Subsection 57 (1) of the said Act is amended by inserting after “municipality” in the second line “or school board”.

**(2)** Section 57 of the said Act is amended by adding thereto the following subsections:

Exception

(3) Despite subsection (1), upon the request of a person assessed under this Act, an assessor may provide sufficient information on similar real property in the vicinity, other than actual income and expense information on individual properties, to enable the person to determine the fairness of that person’s assessment.

Idem

(4) Despite subsection (1), the assessment commissioner shall make available to all municipalities and school boards within the assessment region for which the assessment commissioner is appointed, information sufficient to enable them to meet their planning requirements other than actual income and expense information on individual properties.

Commence-  
ment

**5.** This Act shall be deemed to have come into force on the 1st day of December, 1988.

Short title

**6.** The short title of this Act is the *Assessment Amendment Act, 1989*.

# Bill 37

(Chapter 42  
*Statutes of Ontario, 1989*)

## An Act to amend the Assessment Act

The Hon. B. Grandmaître  
*Minister of Revenue*



<i>1st Reading</i>	June 21st, 1989
<i>2nd Reading</i>	July 5th, 1989
<i>3rd Reading</i>	July 13th, 1989
<i>Royal Assent</i>	July 13th, 1989





# Bill 37

1989

## An Act to amend the Assessment Act

HER MAJESTY, by and with the advice and consent of the Legislative Assembly of the Province of Ontario, enacts as follows:

**1.** Clause 7 (1) (a) of the *Assessment Act*, being chapter 31 of the Revised Statutes of Ontario, 1980, as re-enacted by the Statutes of Ontario, 1986, chapter 69, section 3, is repealed and the following substituted therefor:

- (a) The business of a distiller for a sum equal to,
  - (i) for the 1989 taxation year, 100 per cent of the assessed value of the land so occupied or used, exclusive of the portion of the land occupied or used for the distilling of alcohol solely for industrial purposes, and for a sum equal to 75 per cent of the assessed value as to such last-mentioned portion, and
  - (ii) for the 1990 and subsequent taxation years, 75 per cent of the assessed value of the land so occupied or used.

**2.** In each of the years 1989, 1990 and 1991, the Minister of Municipal Affairs may make grants, upon such terms and conditions as the Minister considers necessary, to any municipality to compensate the municipality for a loss of tax revenue resulting from the reduction in the rate of business assessment provided by clause 7 (1) (a) of the *Assessment Act*, as re-enacted by section 1 of this Act.

Grants by  
Minister of  
Municipal  
Affairs

**3.** In addition to any grants that may have been paid pursuant to section 2, in each of the years 1992, 1993 and 1994, the Minister of Municipal Affairs may, where the Minister considers that the loss of revenue has been sufficiently significant, make further grants, upon such terms and conditions as the Minister considers necessary, to any municipality to further compensate the municipality for a loss in revenue resulting from the reduction in the rate of business assessment provided

Additional  
grants

by clause 7 (1) (a) of the *Assessment Act*, as re-enacted by section 1 of this Act.

**4.—**(1) Subsection 57 (1) of the said Act is amended by inserting after “municipality” in the second line “or school board”.

(2) Section 57 of the said Act is amended by adding thereto the following subsections:

Exception

(3) Despite subsection (1), upon the request of a person assessed under this Act, an assessor may provide sufficient information on similar real property in the vicinity, other than actual income and expense information on individual properties, to enable the person to determine the fairness of that person's assessment.

Idem

(4) Despite subsection (1), the assessment commissioner shall make available to all municipalities and school boards within the assessment region for which the assessment commissioner is appointed, information sufficient to enable them to meet their planning requirements other than actual income and expense information on individual properties.

Commence-  
ment

**5.** This Act shall be deemed to have come into force on the 1st day of December, 1988.

Short title

**6.** The short title of this Act is the *Assessment Amendment Act, 1989*.



## Bill 38

### **An Act to amend the Landlord and Tenant Act**

Mr. Philip  
(*Etobicoke-Rexdale*)

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<i>1st Reading</i>	June 22nd, 1989
<i>2nd Reading</i>	
<i>3rd Reading</i>	
<i>Royal Assent</i>	

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#### EXPLANATORY NOTE

The purpose of the Bill is to make void any provision in a tenancy agreement prohibiting a tenant from keeping a pet in a rented residential premises. An exception is provided in the case of rental of a condominium unit if the declaration for that condominium prohibits owners from keeping pets.

**Bill 38**

**1989**

**An Act to amend the Landlord and Tenant Act**

HER MAJESTY, by and with the advice and consent of the Legislative Assembly of the Province of Ontario, enacts as follows:

**1. The *Landlord and Tenant Act*, being chapter 232 of the Revised Statutes of Ontario, 1980, is amended by adding thereto the following section:**

**97a.**—(1) Any provision in a tenancy agreement prohibiting a tenant from keeping a pet in residential premises is void. Provisions  
restricting  
pets void

(2) Subsection (1) does not apply to a tenancy agreement in respect of a unit of a corporation to which the *Condominium Act* applies if the declaration for that corporation prohibits the keeping of pets in units of the corporation. Exception  
R.S.O. 1980,  
c. 84

**2. This Act comes into force on the day it receives Royal Assent.** Commence-  
ment

**3. The short title of this Act is the *Landlord and Tenant Amendment Act, 1989*.** Short title





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# Bill 39

## An Act to revise the Veterinarians Act

The Hon. J. Riddell

*Minister of Agriculture and Food*



*1st Reading*      June 29th, 1989

*2nd Reading*

*3rd Reading*

*Royal Assent*

## EXPLANATORY NOTES

The Bill revises the *Veterinarians Act*. The main features of the revision are:

1. The Ontario Veterinary Association is continued as the College of Veterinarians of Ontario.
2. The Lieutenant Governor in Council will appoint to the Council of the College not fewer than three and not more than five persons who are not veterinarians.
3. The establishment of the Registration Committee, to consider licensing matters, with provision for appeal to the Health Disciplines Board.
4. The establishment of the Accreditation Committee, to consider matters related to the issuance of certificates of accreditation to establish and operate veterinary clinics, with provision for appeal to the Health Disciplines Board.
5. The establishment of the Complaints Committee, to consider and investigate complaints regarding members of the College, with power to refer matters to the Discipline Committee.
6. The establishment of the Discipline Committee, to hear and determine specific allegations of professional misconduct, with power to impose a wide range of penalties and provision for appeal to the Divisional Court.
7. The authority of the Council of the College to make regulations will be subject to the approval of the Lieutenant Governor in Council and to prior review by the Minister. In addition, the Minister may advise the Council of the College on the implementation of the Act and the regulations. Also, the Minister may request the Council to make, amend or revoke a regulation and, if the Council fails to act within sixty days after the request, the Lieutenant Governor in Council may make, amend or revoke the regulation.
8. The Council of the College may establish standards required of veterinary facilities to qualify for a certificate of accreditation. The Lieutenant Governor in Council is given the power to determine the standards if the Council fails to act within sixty days of a request by the Minister to make, amend or revoke the standards.

Bill 39

1989

## An Act to revise the Veterinarians Act

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HER MAJESTY, by and with the advice and consent of the Legislative Assembly of the Province of Ontario, enacts as follows:

**1.**—(1) In this Act,

Definitions

R.S.O. 1980,  
c. 196

“Board” means the Health Disciplines Board under the *Health Disciplines Act*;

“by-laws” means the by-laws made under this Act;

“certificate of accreditation” means a certificate of accreditation issued under this Act to establish or operate a veterinary facility;

“College” means the College of Veterinarians of Ontario;

“Council” means the Council of the College;

“drug” means drug as defined in Part VI of the *Health Disciplines Act*;

“impaired”, in relation to a person, means suffering from a physical or mental condition or disorder of a nature and extent that adversely affects the person’s ability to practice veterinary medicine;

“licence” means a licence to engage in the practice of veterinary medicine issued under this Act;

“Minister” means the Minister of Agriculture and Food;

“practice of veterinary medicine” includes the practice of dentistry, obstetrics including ova and embryo transfer, and surgery, in relation to an animal other than a human being;

“Registrar” means the Registrar of the College;

“regulations” means the regulations made under this Act;

“veterinary facility” means a building, land or vehicle or any combination of them used or intended to be used as a place in or from which to engage in the practice of veterinary medicine.

Hearings and  
submissions  
R.S.O. 1980,  
c. 484

(2) Despite the *Statutory Powers Procedure Act*, no board, committee, person or group of persons shall be required to hold a hearing or to afford to any person an opportunity to appear or to make submissions before making a decision or proposal, giving a direction or otherwise disposing of a matter under this Act except to the extent that a hearing or an opportunity to appear or to make submissions is specifically required by this Act.



**2.** The Ontario Veterinary Association, a body corporate, Name is continued as a corporation without share capital under the name of "College of Veterinarians of Ontario".

**3.—(1)** The principal object of the College is to regulate Objects the practice of veterinary medicine and to govern its members in accordance with this Act, the regulations and the by-laws in order that the public interest may be served and protected.

**(2)** For the purpose of carrying out its principal object, the Idem College has the following additional objects:

1. To establish, maintain and develop standards of knowledge and skill among its members.
2. To establish, maintain and develop standards of qualification and standards of practice for the practice of veterinary medicine.
3. To establish, maintain and develop standards of professional ethics among its members.
4. To promote public awareness of the role of the College.
5. To perform such other duties and exercise such other powers as are imposed or conferred on the College under any Act.

**(3)** For the purpose of carrying out its objects, the College Capacity and powers of College has the capacity and the powers of a natural person.

**4.—(1)** The council of the Ontario Veterinary Association Council is continued as the Council of the College and shall be the governing body and board of directors of the College and shall manage and administer its affairs.

**(2)** The Council shall be composed of, Composition

- (a) not fewer than nine and not more than fifteen persons who are members of the College and are elected by the members of the College in the number and manner provided by by-law of the Council; and
- (b) not fewer than three and not more than five persons who are not members of the governing body of a self-regulating licensing body under any other Act or licensed under this Act and who are appointed by the Lieutenant Governor in Council.

Remuneration of lay members

(3) The persons appointed under clause (2) (b) shall be paid, out of the moneys appropriated therefor by the Legislature, such expenses and remuneration as is determined by the Lieutenant Governor in Council.

Term of office

(4) The term of an appointment under clause (2) (b) must not exceed three years.

Reappointment

(5) A person whose appointment under clause (2) (b) expires is eligible for reappointment but no person shall be appointed and reappointed for more than six consecutive years.

Qualifications

(6) Every member of the College who,

- (a) practises or resides in Ontario;
- (b) is the holder of a licence that is not limited to the practice of veterinary medicine for educational purposes only;
- (c) is not in default of an annual fee prescribed by the regulations; and
- (d) is not in default of filing a return required by the regulations,

is qualified to vote at an election of members of the Council for the constituency to which the member of the College belongs.

Officers

(7) The Council shall elect annually a president and one or more vice-presidents of the College from among the elected members of the Council.

Registrar and staff

(8) The Council shall appoint a Registrar, and the Executive Committee may appoint such other persons as are from time to time necessary or desirable in the opinion of the Executive Committee to perform the work of the College.

Quorum

(9) A majority of the members of the Council constitutes a quorum.

Vacancies

(10) Where one or more vacancies occur in the membership of the Council, the members remaining in office constitute the Council so long as their number is not fewer than a quorum.

Continuation of council members

(11) The members of the council of the Ontario Veterinary Association who were in office immediately before the coming into force of this Act shall continue in office until the expira-

tion of their terms or until their offices otherwise become vacant.

**5.—**(1) Every person who holds a licence is a member of the College subject to any conditions and limitations to which the licence is subject. Membership

(2) A member may resign his or her membership by filing with the Registrar a resignation in writing and the member's licence is thereupon cancelled. Resignation of membership

(3) The Registrar may cancel a licence for non-payment of any fee prescribed by the regulations or for failure to file a return required by the regulations after giving the member at least two months notice of the default and intention to cancel. Cancellation for default of fees

(4) A person whose licence is cancelled, revoked or suspended remains subject to the continuing jurisdiction of the College in respect of, Continuing jurisdiction

- (a) an investigation or disciplinary action arising out of his or her conduct while a member; and
- (b) an inquiry or proceeding related to whether the person is impaired.

**6.** In addition to the Minister's other powers and duties under this Act, the Minister may, Powers of Minister

- (a) review the activities of the Council;
- (b) request the Council to undertake activities that, in the opinion of the Minister, are necessary and advisable to carry out the intent of this Act;
- (c) advise the Council with respect to the implementation of this Act and the regulations and with respect to the methods used or proposed to be used by the Council to implement policies and to enforce its regulations and procedures;
- (d) request the Council to make, amend or revoke regulations respecting any matter under section 7 or the standards for veterinary facilities established under section 8.

**7.—**(1) Subject to the approval of the Lieutenant Governor in Council and with prior review by the Minister, the Council may make regulations with respect to the following matters: Regulations

1. Prescribing classes of licences and governing the qualifications and requirements for the issuance of licences or any class thereof and prescribing the conditions and limitations thereof.
2. Respecting any matter ancillary to the provisions of this Act with regard to the issuance, cancellation, suspension and revocation of licences.
3. Respecting any matter ancillary to the provisions of this Act with regard to the issuance, renewal, suspension and revocation of certificates of accreditation.
4. Prescribing classes of certificates of accreditation and governing the qualifications and requirements for the issuance and renewal of certificates of accreditation or any class thereof and prescribing the conditions and limitations thereof.
5. Providing for the designation of members of the College as specialists, prescribing the qualifications and requirements for designation as a specialist, providing for the suspension or revocation of such a designation and for the regulation and prohibition of the use of the designation by members of the College.
6. Governing the use of names and designations in the practice of veterinary medicine by members of the College.
7. Authorizing entries in, and the form of maintenance of, registers of members and former members of the College and directories of veterinary facilities and providing for the issuance of certificates of standing by the Registrar.
8. Prescribing and governing standards of practice for the profession.
9. Regulating the compounding, dispensing and sale of drugs by members of the College, and the containers and labelling of drugs compounded, dispensed or sold by members, and prescribing the records that shall be kept in respect of such compounding, dispensing and sale.

10. Establishing a special category of membership for retired members and determining the rights, privileges, duties and obligations of such members.
11. Respecting the promotion or advertising of the practice of veterinary medicine.
12. Prohibiting the practice of veterinary medicine where there is a conflict of interest and defining conflict of interest for the purpose.
13. Defining professional misconduct for the purposes of this Act.
14. Respecting the reporting and publication of decisions in disciplinary matters.
15. Requiring the payment of annual fees by members of the College, fees for processing applications, licensing, certificates, examinations and inspections, including penalties for late payment, prompt payment discounts and interest on late payments and fees for anything the Registrar is required or authorized to do, and prescribing the amounts thereof.
16. Requiring the making of returns of information by members of the College in respect of names, addresses, telephone numbers, professional associates, partners, employees and professional activities.
17. Providing for the compilation of statistical information on the supply, distribution, professional liability insurance and professional activities of members of the College and requiring members to provide the information necessary to compile such statistics.
18. Requiring and providing for the inspection of veterinary facilities and of the records kept by members of the College in connection with the practice of veterinary medicine.
19. Authorizing the communication of material that comes to a person's knowledge in the course of duties, employment, examination, review or investigation to specified classes of persons or for specified purposes.



20. Respecting the duties and authority of the Registrar.
21. Prescribing and requiring the making and keeping of records by members of the College in respect of the practice of veterinary medicine.
22. Exempting any member of the College from any provision of the regulations under such special circumstances in the public interest as the Council considers advisable.
23. Providing that any form required under this Act be in a form approved by the Registrar.

## Application

(2) A regulation made under subsection (1) may be general or particular in its application.

## Adoption of accreditation

(3) For the purpose of prescribing the qualifications and requirements for the issuance of licences or the issuance and renewal of certificates of accreditation, the Council, in a regulation under subsection (1) or a standard under subsection 8 (1), may adopt as its own the recognition or accreditation granted by any organization specified by the Council.

## Distribution of regulations

(4) The Council shall,

- (a) forward a copy of each regulation made under subsection (1) to each member of the College; and
- (b) keep a copy of each regulation made under subsection (1) available for public inspection in the office of the College.

## Regulations by Lieutenant Governor in Council

(5) Where the Minister requests in writing under clause 6 (d) that the Council make, amend or revoke a regulation or standard and the Council has failed to do so within sixty days after the request, the Lieutenant Governor in Council may make regulations respecting the subject-matter set out in the request.

## Conflicting provisions

(6) In cases of conflict, a regulation made under subsection (5) prevails over a regulation or standard made under subsection (1) or 8 (1) respectively.

## Standards for veterinary facilities

**8.—(1)** The Council may establish standards for veterinary facilities not inconsistent with this Act and the regulations which must be met in order to qualify for the issuance or renewal of a certificate of accreditation or any class thereof.

(2) The Council shall forward a copy of the standards established under subsection (1) to the Minister and to each member of the College and shall keep a copy available for public inspection in the office of the College.

Distribution  
of standards

**9.**—(1) The Council may pass by-laws relating to the administrative and domestic affairs of the College not inconsistent with this Act and the regulations and, without limiting the generality of the foregoing, may pass by-laws respecting the following matters:

By-laws

1. Prescribing the seal and other insignia of the College and providing for their use.
2. Providing for the execution of documents by the College.
3. Respecting banking and finance.
4. Fixing the financial year of the College and providing for the audit of the accounts and transactions of the College.
5. Prescribing the number of vice-presidents of the College, prescribing procedures for the election of the president and vice-presidents and for the filling of vacancies in those offices.
6. Respecting the calling, holding and conducting of meetings of the Council and the duties of members of the Council.
7. Respecting the calling, holding and conducting of meetings of the membership of the College.
8. Providing for the remuneration of members of the Council and members of committees other than members appointed by the Lieutenant Governor in Council, and providing for payment of necessary expenses of the Council and committees in the conduct of their business.
9. Providing for the appointment, composition, powers, duties and quorums of additional or special committees.
10. Providing for the appointment of persons to make investigations for the purposes of this Act.

11. Providing procedures for the making, amending and revoking of by-laws.
12. Respecting management of the property of the College.
13. Respecting the application of the funds of the College and the investment and reinvestment of any of its funds not immediately required, and for the safe-keeping of its securities.
14. Respecting the borrowing of money by the College and the giving of security therefor.
15. Respecting membership of the College in other organizations the objects of which are not inconsistent with and are complementary to those of the College, the payment of annual assessments and provision for representatives at meetings.
16. Delegating to the Executive Committee the powers and duties set out in the by-laws, but this paragraph does not authorize the delegation of the power to make, amend or revoke a regulation or a by-law.
17. Fixing the number of members to be elected to the Council under clause 4 (2) (a) and defining constituencies, and prescribing the number of representatives.
18. Respecting and governing the qualifications, nomination, election and term or terms of office of the members to be elected to the Council, and controverted elections.
19. Prescribing the conditions disqualifying elected members from sitting on the Council and governing the filling of vacancies on the Council.

Signed by-laws and resolutions

(2) A by-law or resolution of the Council signed by a majority of the members of the Council is as valid as if passed at a meeting of the Council held for that purpose.

Confirmation of by-laws

(3) A by-law passed by the Council is not effective until confirmed by the members of the College at a meeting or by means of a vote conducted by mail.

Distribution of by-laws

(4) The Council shall,

- (a) forward a copy of each by-law confirmed under subsection (3) to the Minister and to each member of the College; and
- (b) keep a copy of each by-law confirmed under subsection (3) available for public inspection in the office of the College.

(5) Subsection (3) does not apply to a by-law passed within four months after this Act comes into force. Application of subs. (3)

**10.**—(1) The following committees are hereby established: Establishment of committees

- 1. Executive Committee.
- 2. Accreditation Committee.
- 3. Registration Committee.
- 4. Complaints Committee.
- 5. Discipline Committee.

(2) The Council shall appoint the committees referred to in subsection (1) and may establish and appoint such other committees as it considers necessary. Idem

(3) Where one or more vacancies occur in the membership of a committee, the members remaining in office constitute the committee so long as their number is not fewer than the prescribed quorum. Vacancies

(4) The Council shall name one member of each committee to chair the committee. Person to chair

(5) No person shall be appointed and reappointed to the same committee for more than six consecutive years. Term

**11.**—(1) No person shall engage in the practice of veterinary medicine or hold himself, herself or itself out as engaging in the practice of veterinary medicine unless the person is the holder of a licence. Licence required

(2) Subsection (1) does not apply to prevent a person, Exceptions

- (a) from rendering first aid or temporary assistance in an emergency without fee;
- (b) from treating an animal if the person is the owner of the animal, is a member of the household of the

owner of the animal or is employed for general agricultural or domestic work by the owner of the animal;

- (c) from taking blood samples;
- (d) from preventing or treating fish and invertebrate diseases;
- (e) from collecting or using semen under the authority of a licence issued under the *Artificial Insemination of Live Stock Act*;
- (f) from collecting or transporting ova and embryos of animals other than mammals.

R.S.O. 1980,  
c. 29

Idem,  
student

(3) Subsection (1) does not apply to a student of veterinary medicine to the extent that the student is engaging in the undergraduate curriculum of studies at the Ontario Veterinary College of the University of Guelph.

Interpretation  
of owner

(4) For the purpose of clause (2) (b), a person is not the owner of an animal if the person buys the animal, treats it and resells it or intended to resell it to either the person who sold it to him or her or to that person's nominee.

Proof of  
practice

(5) For the purposes of this section, proof of the performance of one act in the practice of veterinary medicine on one occasion is sufficient to establish engaging in the practice of veterinary medicine.

Application  
of Part VI of  
R.S.O. 1980,  
c. 196

(6) Part VI of the *Health Disciplines Act* does not apply to prevent a person who holds a licence from compounding, dispensing or selling drugs in the course of engaging in the practice of veterinary medicine.

Application  
of  
R.S.O. 1980,  
c. 248

(7) The *Live Stock Medicines Act* does not apply to prevent a person who holds a licence from selling a drug in the course of engaging in the practice of veterinary medicine to an owner of live stock for the treatment of live stock.

Executive  
Committee

**12.—**(1) The Executive Committee shall be composed of five members of the Council, including,

- (a) the president and one or two vice-presidents of the College; and
- (b) not more than three other members of the Council of whom one shall be a member of the Council



appointed to the Council by the Lieutenant Governor in Council.

(2) Three members of the Executive Committee constitute a quorum. Quorum

(3) The Executive Committee shall perform such functions of the Council as are delegated to it by the Council, the by-laws or this Act. Functions

(4) Subject to ratification by the Council at its next meeting, the Executive Committee, between meetings of the Council, may perform any other function of the Council that, in the opinion of the Executive Committee, must be performed immediately. Other functions

(5) Subsection (4) does not apply to authorize the Executive Committee to make, amend or revoke a regulation, a by-law or a standard described under subsection 8 (1). Limitation

**13.**—(1) The Registration Committee shall be composed of five persons of whom, Registration Committee

- (a) not fewer than three shall be members of the Council elected to the Council by the members of the College;
- (b) one shall be a member of the Council appointed to the Council by the Lieutenant Governor in Council; and
- (c) one may be a member of the College who is not a member of the Council.

(2) Three members of the Registration Committee constitute a quorum. Quorum

**14.**—(1) Subject to subsections (2) and (3), the Registrar shall issue a licence to any person who applies therefor in accordance with the regulations and who meets the qualifications and requirements prescribed by the regulations. Issuance of licence

(2) The Registrar shall refuse to issue a licence where, in the opinion of the Registrar, Grounds for refusal

- (a) the applicant does not meet the qualifications and requirements for the issuance of the licence;
- (b) the past conduct of the applicant affords reasonable ground for believing that the applicant will not

engage in the practice of veterinary medicine with honesty and integrity; or

- (c) there is reasonable ground for believing that the applicant is impaired.

Referral to  
Registration  
Committee

(3) The Registrar, on his or her own initiative, may refer and on the request of the applicant shall refer the application to the Registration Committee for a determination as to any of the matters mentioned in clauses (2) (a), (b) and (c).

Power of  
Registration  
Committee

(4) The Registration Committee shall determine the eligibility of applicants for licences referred to the Registration Committee under subsection (3) and may in any such case require an applicant to obtain such additional experience, education or training as the Registration Committee specifies.

Exemption

(5) The Registration Committee may exempt an applicant from compliance with any qualification or requirement for a licence.

Directions to  
Registrar

(6) The Registration Committee, after considering an application for a licence, may direct the Registrar,

- (a) to issue the licence;
- (b) to refuse to issue the licence; or
- (c) to issue the licence subject to the conditions and limitations the Registration Committee specifies.

Certificate of  
accreditation  
required

**15.** No person shall establish or operate a veterinary facility except under and in accordance with a certificate of accreditation.

Accreditation  
Committee

**16.—(1)** The Accreditation Committee shall be composed of five persons of whom,

- (a) not fewer than three shall be members of the Council elected to the Council by the members of the College;
- (b) one shall be a member of the Council appointed to the Council by the Lieutenant Governor in Council; and
- (c) one may be a member of the College who is not a member of the Council.

(2) Three members of the Accreditation Committee constitute a quorum. Quorum

**17.**—(1) Subject to subsections (2) and (3), the Registrar shall issue or renew a certificate of accreditation upon the application of a member of the College who applies therefor if the applicant and the veterinary facility meet the qualifications, requirements and standards prescribed by the regulations and by the Council for the proposed veterinary facility. Issuance of certificate of accreditation

(2) The Registrar shall refuse to issue or renew a certificate of accreditation where, in the opinion of the Registrar, the applicant or the veterinary facility does not meet the qualifications, requirements and standards prescribed by the regulations and by the Council for the proposed veterinary facility. Grounds for refusal

(3) The Registrar, on his or her own initiative, may refer and on the request of the applicant shall refer the application to the Accreditation Committee for a determination as to whether or not the applicant or the facility or both meet the qualifications, requirements and standards prescribed by the regulations and by the Council for the proposed veterinary facility. Referral to Accreditation Committee

(4) The Accreditation Committee may exempt an applicant or veterinary facility from compliance with any qualification, requirement or standard for a certificate of accreditation. Exemption

(5) The Accreditation Committee shall determine the eligibility of applicants and facilities for certificates of accreditation that are referred to the Accreditation Committee under subsection (3) and, after considering an application for the issuance or renewal of a certificate of accreditation, may direct the Registrar, Directions to Registrar

(a) to issue or to renew the certificate of accreditation;

(b) to refuse to issue or to renew the certificate of accreditation; or

(c) to issue or to renew the certificate of accreditation subject to the conditions and limitations the Accreditation Committee specifies.

**18.**—(1) Where,

Hearing by Board

(a) the Registration Committee proposes to direct the Registrar to refuse to issue a licence or proposes to direct the Registrar to issue a licence subject to conditions or limitations; or

- (b) the Accreditation Committee proposes to direct the Registrar to refuse to issue or to refuse to renew a certificate of accreditation, or proposes to direct the Registrar to issue or to renew a certificate of accreditation subject to conditions or limitations,

the Registrar on behalf of the committee shall serve notice of the proposal, together with written reasons therefor, on the applicant and shall send a copy of the proposal and the written reasons to the Board.

Exception

(2) Subsection (1) does not apply in respect of a proposal to refuse to issue a licence where the applicant previously held a licence that was suspended or revoked as a result of a decision of the Discipline Committee, a decision of the Registration Committee or a decision of the council of the Ontario Veterinary Association under a predecessor of this Act.

Right to a hearing or review

(3) The applicant is entitled to a hearing by the Board, or to a review by the Board of his or her application and documentary evidence in support thereof without oral evidence, if the applicant mails or delivers within fifteen days after the notice under subsection (1) is served on the applicant, notice in writing to the Board requiring the hearing or the review by the Board, as the applicant specifies.

Notice of right to hearing or review

(4) The notice under subsection (1) shall inform the applicant of the right to a hearing or review by the Board as set out in subsection (3).

Powers of committee where no hearing or review

(5) Where an applicant does not require a hearing or review by the Board in accordance with subsection (3), the Board shall so notify the committee making the proposal and the committee may carry out the proposal stated in its notice under subsection (1).

Hearing by Board

(6) Where an applicant requires a hearing by the Board in accordance with subsection (3), the Board shall appoint a time for, give notice of and hold the hearing.

Review by Board

(7) Where an applicant requires a review by the Board in accordance with subsection (3), the Board shall review the application and documentary evidence in support thereof without oral evidence.

Findings of fact

(8) The findings of fact of the Board pursuant to a hearing or review shall be based exclusively on evidence admissible or matters that may be noticed under sections 15 and 16 of the *Statutory Powers Procedure Act*.



(9) Three members of the Board constitute a quorum for the purpose of a proceeding under this section.

Quorum

(10) The Board shall, after the hearing or review in respect of a licence,

Powers of  
Board re  
licence

- (a) confirm the proposed decision of the Registration Committee;
- (b) require the Registration Committee to direct the Registrar to issue a licence of the appropriate class subject to such conditions and limitations as the Board considers appropriate in cases where the Board finds that the applicant meets the qualifications and requirements for registration and that the Committee has exercised its powers improperly; or
- (c) refer the matter back to the Registration Committee for further consideration, and the Board may make such recommendations as it considers appropriate in the circumstances.

(11) The Board shall, after the hearing or review in respect of a certificate of accreditation,

Powers of  
Board re  
certificate of  
accreditation

- (a) confirm the proposed decision of the Accreditation Committee;
- (b) require the Accreditation Committee to direct the Registrar to issue or renew a certificate of accreditation for the appropriate class of veterinary facility subject to such conditions and limitations as the Board considers appropriate in cases where the Board finds that the applicant and the veterinary facility meet the qualifications, requirements and standards for the issuance or renewal of the certificate of accreditation and that the Committee has exercised its powers improperly; or
- (c) refer the matter back to the Accreditation Committee for further consideration, and the Board may make such recommendations as it considers appropriate in the circumstances.

(12) The Board may extend the time for the giving of notice requiring a hearing by an applicant under this section before or after the expiration of such time where it is satisfied that there are apparent grounds for granting relief to the applicant and that there are reasonable grounds for applying

Extension of  
time for  
requiring  
hearing



for the extension, and the Board may give such directions as it considers proper consequent upon the extension.

Parties (13) The College and the applicant who has required the hearing are parties to proceedings before the Board under this section.

Prohibitions on publication and identification (14) Section 29, which relates to proceedings of the Discipline Committee, applies with necessary modifications to a hearing by the Board under this section.

Examination of documentary evidence (15) A party to a hearing under this section shall be afforded an opportunity to examine before the hearing any written or documentary evidence that will be produced or any report the contents of which will be given in evidence at the hearing.

Members holding hearing or review not to have taken part in investigation, etc. (16) Members of the Board holding a hearing or review shall not have taken part before the hearing or review in any investigation or consideration of the subject-matter of the hearing or review other than at a previous hearing or review of the Board and shall not communicate directly or indirectly in relation to the subject-matter of the hearing or review with any person or with any party or any party's representative except upon notice to and opportunity for all parties to participate, but the Board may seek legal advice from an adviser independent from the parties and, in such case, the nature of the advice shall be made known to the parties in order that they may make submissions as to the law.

Recording of evidence (17) The oral evidence taken before the Board at a hearing shall be recorded and, if so required, copies of a transcript of the oral evidence shall be furnished upon the same terms as in the Supreme Court.

Only members at hearing to participate in decision (18) No member of the Board shall participate in a decision of the Board following upon a hearing unless he or she was present throughout the hearing and heard the evidence and argument of the parties.

Release of documentary evidence (19) Documents and things put in evidence at a hearing shall, upon the request of the person who produced them, be released to the person within a reasonable time after the matter in issue has been finally determined.

Registers **19.**—(1) The Registrar shall maintain one or more registers in which is entered,

(a) the name of every person to whom a licence is issued;

- (b) any designation of a member of the College as a specialist and any withdrawal of recognition of the member's specialist status;
- (c) any conditions or limitations imposed on a licence by a committee;
- (d) any revocation, suspension, cancellation or termination of a licence;
- (e) the fact and amount of a fine imposed by the Discipline Committee and the fact of a reprimand by the Discipline Committee, unless the Discipline Committee directs that no entry be made;
- (f) where an entry results from a decision of a committee, the name of the committee that made the decision and any finding of the committee resulting in the entry;
- (g) the date of the decision or order that results in an entry under this subsection; and
- (h) any other information authorized to be entered by the regulations.

(2) The Registrar shall maintain one or more directories in which is entered the name of every person who is the holder of a certificate of accreditation identifying the location and class of the veterinary facility for which the certificate of accreditation is issued, the conditions and limitations attached to the certificate of accreditation, the date of expiry of the certificate of accreditation, every revocation or suspension of a certificate of accreditation and any other information authorized to be entered by the regulations.

Directories

(3) Any person has the right, during normal business hours, to inspect the registers and directories maintained by the Registrar.

Inspection

(4) The Registrar may maintain the registers and directories mentioned in subsections (1) and (2) in the form of books or may maintain them in any electronic or other medium that provides a visual display of recorded information.

Form of registers and directories

**20.** Every person who is a member, other than a life member, of the Ontario Veterinary Association immediately before this Act comes into force shall be deemed to be the holder of a licence that is subject to the terms, conditions and

Continuation of memberships

limitations that applied to the person's registration, and is a member of the College.

Continuation  
of certificates  
of accredi-  
tation

**21.** Every certificate of accreditation issued under the *Veterinarians Act*, being chapter 522 of the Revised Statutes of Ontario, 1980, and in force immediately before this Act comes into force shall be deemed to be a certificate of accreditation issued under this Act that is subject to the terms, conditions and limitations that applied to it immediately before the coming into force of this Act.

Referral of  
certificate of  
accreditation

**22.—(1)** The Registrar may refer a certificate of accreditation to the Accreditation Committee where the Registrar is of the opinion that there is reasonable ground for believing that,

- (a) the holder of the certificate of accreditation or the veterinary facility in respect of which the certificate of accreditation was issued has ceased to meet the qualifications, requirements and standards prescribed by the regulations and by the Council for the issuance or renewal of the certificate of accreditation;
- (b) the veterinary facility in respect of which the certificate of accreditation was issued is being used or has been used in contravention of a term, condition or limitation of the certificate of accreditation; or
- (c) the veterinary facility in respect of which the certificate of accreditation was issued is being used or has been used as a veterinary facility of a class other than the class for which the certificate of accreditation was issued or renewed.

Hearing

(2) The Accreditation Committee shall appoint a time for, give notice of and hold a hearing to determine the allegation in respect of the certificate of accreditation or the holder thereof.

Powers of  
Accreditation  
Committee

(3) Where the Accreditation Committee finds that an allegation mentioned in clause (1) (a), (b) or (c) is valid, the Accreditation Committee may, by order,

- (a) revoke the certificate of accreditation;
- (b) suspend the certificate of accreditation for a stated period not exceeding two years;
- (c) suspend the certificate of accreditation pending the demonstration, in such manner as the Committee

specifies, of compliance with such standards as are specified by the Committee;

- (d) change the class of veterinary facility authorized by the certificate of accreditation; or
- (e) impose such conditions and limitations or such further conditions and limitations on the certificate of accreditation as are specified by the Committee,

or any combination thereof.

(4) Subsections 28 (5) to (15) and section 29, which relate to proceedings before the Discipline Committee, apply with necessary modifications to proceedings before the Accreditation Committee under subsection (2). Procedures

(5) The College and the holder of the certificate of accreditation in respect of which the hearing is held are parties to the hearing before the Accreditation Committee under subsection (2). Parties

(6) The jurisdiction of the Discipline Committee is not affected by the commencement of proceedings or the making of an order under this section. Other proceedings

**23.—**(1) The Complaints Committee shall be composed of not fewer than three and not more than ten persons of whom, Complaints Committee

- (a) at least one is a member of the Council appointed to the Council by the Lieutenant Governor in Council; and
- (b) the others are members of the College, of whom at least one, but not the majority, is a member of the Council.

(2) A member of the Complaints Committee who takes part in the consideration or investigation of a complaint regarding the conduct of a member or former member of the College is not eligible to take part as a member of the Discipline Committee in proceedings before the Discipline Committee in respect of the same conduct of the member or former member of the College. Eligibility

(3) A majority of the members of the Complaints Committee, one of whom is a person appointed to the Council by the Lieutenant Governor in Council, constitutes a quorum. Quorum



Duties of  
Complaints  
Committee

**24.**—(1) The Complaints Committee shall consider and investigate complaints made by members of the public or members of the College regarding the conduct of a member or former member of the College, but no action shall be taken by the Committee under subsection (2) unless,

- (a) a written complaint has been filed with the Registrar and the member or former member whose conduct is being investigated has been notified of the complaint and given at least two weeks in which to submit in writing to the Committee any explanations or representations the member or former member may wish to make concerning the matter; and
- (b) the Committee has examined or has made every reasonable effort to examine all records and other documents relating to the complaint.

## Idem

(2) The Complaints Committee in accordance with the information it receives may,

- (a) direct that the matter be referred, in whole or in part, to the Discipline Committee or, for the purposes of section 33, be brought to the attention of the Registrar;
- (b) direct that the matter not be referred to the Discipline Committee or brought to the attention of the Registrar under clause (a); or
- (c) take such action as it considers appropriate in the circumstances and that is not inconsistent with this Act or the regulations or by-laws.

Decision and  
reasons

(3) The Complaints Committee shall give its decision in writing to the Registrar and, where the decision is made under clause (2) (b) or (c), its reasons therefor.

## Advice

(4) The Complaints Committee may require the member or former member whose conduct was considered or investigated by the Committee to appear before the Committee and the Committee may provide the member or former member with advice in respect of the practice of veterinary medicine.

## Complaints

**25.**—(1) Where the Complaints Committee has made a disposition of a complaint respecting a member or former member of the College under section 24, the Registrar shall send to the member or former member and to the complainant, by prepaid first class mail, a copy of the written decision



made by the Committee including reasons therefor, if any, together with notice advising of the right of review under subsection (2).

(2) A complainant or the member or former member of the College complained against who is not satisfied with the decision made by the Complaints Committee disposing of a complaint, except a decision to refer a matter to the Discipline Committee or to bring a matter to the attention of the Registrar, may within twenty days of the mailing of the written decision request the Board to review the decision.

Review of  
complaints

(3) Upon receipt of a request under subsection (2), the Board shall require the Registrar to transmit to the Board within fifteen days of the Board's request a record of the investigation and all such documents and things upon which the decision was based and the Board shall review the decision after giving the complainant an opportunity to state his or her complaint and the member or former member an opportunity to state his or her answer thereto personally, by an agent or in writing.

Idem

(4) Despite the *Statutory Powers Procedure Act*, a review by the Board shall be closed to the public, but if the member or former member whose conduct or actions are the subject-matter of the review requests otherwise by a notice delivered to the Board before the day fixed for the review, the Board shall conduct the review in public except where the Board is of the opinion that,

Closed to the  
public  
R.S.O. 1980,  
c. 484

- (a) matters involving public security may be disclosed;  
or
- (b) the possible disclosure of intimate financial or personal matters outweighs the desirability of holding the review in public.

(5) Subsections 29 (1), (2) and (3), which relate to proceedings of the Discipline Committee, apply with necessary modifications to a review by the Board under this section.

Publication  
prohibited

**26.** Where a complaint respecting a member or former member of the College has not been disposed of by the Complaints Committee within 120 days after the complaint is made, the Board upon application therefor may require the Complaints Committee to make an investigation and, where the investigation of the complaint has not been undertaken, completed and reported on to the Board by the Committee within 120 days after the Board's request, the Board shall

Investigation  
of complaint  
by Board

undertake such investigation and possesses all the powers of investigation of the Complaints Committee under this Act.

Powers of  
Board after  
review or  
investigation  
of complaint

**27.**—(1) The Board may, after review or investigation of a complaint under section 25 or 26,

- (a) confirm the decision, if any, made by the Complaints Committee;
- (b) make such recommendations to the Complaints Committee as the Board considers appropriate; or
- (c) require the Complaints Committee to take such action or proceeding as the Committee is authorized to undertake under this Act.

Board  
quorum

(2) Three members of the Board constitute a quorum for the purposes of an investigation or review of a complaint.

Decision and  
reasons

(3) The Board shall give its decision and reasons therefor in writing to the complainant and the member of the College complained against.

Discipline  
Committee

**28.**—(1) The Discipline Committee shall be composed of ten members of the Council of whom two shall be persons appointed to the Council by the Lieutenant Governor in Council.

Quorum and  
votes

(2) Three members of the Discipline Committee, one of whom is a person appointed to the Council by the Lieutenant Governor in Council, constitute a quorum, and all disciplinary decisions of the Committee require the vote of a majority of the members of the Committee present at the meeting.

Panels

(3) The Discipline Committee may sit in two or more panels simultaneously so long as a quorum of the Committee is present in each panel.

Assignment

(4) The person chairing the Discipline Committee shall assign the members of the Committee to its panels and may change an assignment at any time.

Expiry of  
member's  
term of  
office

(5) Where a proceeding is commenced before the Discipline Committee and the term of office on the Council or on the Committee of a person sitting for the hearing expires or is terminated, other than for cause, before the proceeding has been disposed of but after evidence has been heard, the person shall be deemed to remain a member of the Committee for the purpose of completing the proceeding in the same

manner as if the person's term of office had not expired or been terminated.

(6) Where the Discipline Committee commences a hearing and any member thereof becomes unable to continue to act, the remaining members may complete the hearing despite the absence of the member or members and may render a decision as effectually as if all members of the Committee were present throughout the hearing, despite the absence of a quorum of the Committee.

Disability of member

(7) The findings of fact of the Discipline Committee pursuant to a hearing shall be based exclusively on evidence admissible or matters that may be noticed under sections 15 and 16 of the *Statutory Powers Procedure Act*.

Findings of facts

R.S.O. 1980,  
c. 484

(8) A party to a hearing before the Discipline Committee shall be afforded an opportunity to examine before the hearing any written or documentary evidence that will be produced or any report the contents of which will be given in evidence at the hearing.

Examination of documentary evidence

(9) A party to a hearing before the Discipline Committee who intends to call an expert witness at the hearing shall, at least ten days before the commencement of the hearing, deliver to the other party a report, signed by the expert, setting out his or her name, address and qualifications and the substance of his or her proposed testimony.

Delivery of expert witness report

(10) An expert witness shall not testify at a hearing before the Discipline Committee unless subsection (9) has been complied with, except,

Exception for expert testimony

(a) with the permission of the Committee;

(b) with the consent of the other party; or

(c) to give reply evidence.

(11) Members of the Discipline Committee holding a hearing shall not have taken part before the hearing in any investigation or consideration of the subject-matter of the hearing other than as a member of the Council or the Executive Committee considering the referral of the matter to the Discipline Committee or at a previous hearing of the Committee, and shall not communicate directly or indirectly in relation to the subject-matter of the hearing with any person or with any party or any party's representative except upon notice to and opportunity for all parties to participate, but the Committee may seek legal advice from an adviser independent from the

Members holding hearing not to have taken part in investigation, etc.

parties and, in such case, the nature of the advice shall be made known to the parties in order that they may make submissions as to the law.

Recording of  
evidence

(12) The oral evidence taken before the Discipline Committee at a hearing shall be recorded and, if so required, copies of a transcript of the oral evidence shall be furnished upon the same terms as in the Supreme Court.

Only  
members at  
hearing to  
participate in  
decision

(13) No member of the Discipline Committee shall participate in a decision of the Committee following upon a hearing unless he or she was present throughout the hearing and heard the evidence and argument of the parties.

Release of  
documentary  
evidence

(14) Documents and things put in evidence at a hearing shall, upon the request of the person who produced them, be released to the person within a reasonable time after the matter in issue has been finally determined.

Practice and  
procedure

R.S.O. 1980,  
c. 484

(15) The Discipline Committee may determine its own practice and procedure in relation to hearings and may, subject to section 28 of the *Statutory Powers Procedure Act*, make rules governing such practice and procedure and the exercise of its powers in relation thereto that are not inconsistent with this Act and may prescribe such forms as are considered advisable.

Parties

(16) The College and the member or former member of the College whose conduct is being investigated are parties to the proceedings before the Discipline Committee.

Publication  
prohibited

**29.—(1)** No person shall,

- (a) take or attempt to take a photograph, motion picture, audio or video recording or other record capable of producing visual or aural representations by any means,
  - (i) of any person at a hearing of the Discipline Committee,
  - (ii) of any person entering or leaving a hearing of the Discipline Committee, or
  - (iii) of any person in the building in which a hearing of the Discipline Committee is held, where there is reasonable ground for believing that the person is there for the purpose of attending the hearing; or



- (b) publish, broadcast, reproduce or otherwise disseminate a photograph, motion picture, audio or video recording or record taken in contravention of clause (a).

(2) Subsection (1) does not apply to,

Exception

- (a) a person unobtrusively making handwritten notes or sketches at a hearing;
- (b) a solicitor or party unobtrusively making an audio recording at a hearing that is used only as a substitute for handwritten notes for the purposes of the hearing;
- (c) a person taking a photograph, motion picture, audio or video recording or other record with the authorization of the Discipline Committee for any purpose of the hearing; or
- (d) a person taking a photograph, motion picture, audio or video recording or other record with the authorization of the Discipline Committee and the consent of the parties and of the witnesses to be recorded, for such educational or instructional purposes as the Committee approves.

(3) No person shall publish by any means the name of a member or former member of the College who is a party to a hearing by the Discipline Committee or any information which could reasonably serve to identify the member or former member,

Identification prohibited

- (a) unless the member or former member consents to such publication; or
- (b) until the Discipline Committee completes the hearing and makes a decision that is required by subsection 19 (1) to be entered in a register.

(4) Despite subsection (3), the Registrar may notify any person who, in the Registrar's opinion, is interested in a Discipline Committee hearing into the conduct of a member or former member of the College of the time and place of the hearing and, in so doing, may identify the member or former member.

Exception

**30.**—(1) The Council or the Executive Committee, by resolution, may direct the Discipline Committee to hold a hearing and determine any allegation of professional misconduct

Reference to Discipline Committee



or serious neglect on the part of a member or former member of the College specified in the resolution.

Duties of  
Discipline  
Committee

(2) The Discipline Committee shall,

- (a) when so directed by the Council, the Executive Committee or the Complaints Committee, hear and determine allegations of professional misconduct or serious neglect against a member or former member of the College;
- (b) hear and determine matters referred to it under section 37; and
- (c) perform such other duties as are assigned to it by the Council.

Professional  
misconduct

(3) A member or former member of the College shall be found guilty of professional misconduct by the Discipline Committee if,

- (a) the member or former member has been found guilty of an offence relevant to the suitability to practise veterinary medicine, upon proof of such finding;
- (b) the member's or former member's rights or privileges related to the practice of veterinary medicine under an Act of the Parliament of Canada or of the Legislature of Ontario, other than this Act, or the regulations thereunder, have been restricted or withdrawn, unless by the request of the member or former member, upon proof thereof;
- (c) there has been a finding of professional misconduct or serious neglect, or a like finding, against the member or former member by a veterinary authority in another jurisdiction, upon proof of such finding; or
- (d) the member or former member has been guilty in the opinion of the Committee of professional misconduct as defined in the regulations.

Serious  
neglect

(4) A member or former member of the College shall be found guilty of serious neglect by the Discipline Committee if the member or former member has displayed in his or her professional care of an animal a lack of knowledge, skill or judgment or disregard for the welfare of the animal of a nature or to an extent that demonstrates the member or for-

mer member is unfit to engage in the practice of veterinary medicine or is fit to engage in the practice of veterinary medicine only subject to the conditions and limitations imposed by the Discipline Committee.

(5) Where the Discipline Committee finds a member or former member of the College guilty of professional misconduct or serious neglect, it may by order, Powers of Discipline Committee

- (a) revoke the licence of the member;
- (b) withdraw recognition of the specialist status of the member;
- (c) suspend the licence of the member or suspend recognition of the specialist status of the member, or both, for a stated period or pending the demonstration of such facts as are specified by the Committee;
- (d) impose such conditions and limitations upon the licence of the member for such period of time as is specified by the Committee or pending the demonstration of such facts as are specified by the Committee;
- (e) impose such fine as the Committee considers appropriate, to a maximum of \$5,000, to be paid by the member or former member to the Treasurer of Ontario for payment into the Consolidated Revenue Fund;
- (f) reprimand the member or former member;
- (g) direct that the imposition of a penalty be suspended or postponed for such period and upon such terms as the Committee designates,

or any combination thereof.

(6) Where the Discipline Committee is of the opinion that the commencement of the proceedings was unwarranted, the Committee shall order that the College reimburse the member or former member of the College for his or her costs or such portion thereof as the Committee fixes. Costs

(7) Where the Discipline Committee imposes a fine or reprimands a member or former member, the Committee may direct that the fact and amount of the fine or the fact of the reprimand not be entered in a register required to be kept under subsection 19 (1). Register entries

Publication  
and service  
of decision of  
Discipline  
Committee

**31.—(1)** Where the Discipline Committee finds a member or former member of the College guilty of professional misconduct or serious neglect,

- (a) the Registrar shall publish the finding, with or without the reasons therefor, in a publication of the College; and
- (b) the Registrar shall serve a copy of the decision upon the person, if any, complaining in respect of the conduct or actions of the member or former member.

When name  
is published

(2) If the finding of the Discipline Committee is required by subsection 19 (1) to be recorded in a register, the Registrar shall include the name of the member or former member in the publication required under clause (1) (a).

When name  
is not  
published

(3) If the Discipline Committee directs that no entry be made in a register, the Registrar shall not include the name of the member or former member in the publication required under clause (1) (a).

Stay of  
decision on  
appeal,  
serious  
neglect

**32.—(1)** Where the Discipline Committee revokes or suspends a licence, withdraws or suspends recognition of specialist status or imposes conditions or limitations upon a licence on the ground of serious neglect, the decision takes effect immediately even if an appeal is taken from the decision, unless the court to which the appeal is taken otherwise orders.

Stay of  
decision on  
appeal,  
professional  
misconduct

(2) Where the Discipline Committee revokes or suspends a licence, withdraws or suspends recognition of specialist status or imposes conditions or limitations upon a licence on the ground of professional misconduct, the order does not take effect until the time for appeal from the order has expired without an appeal being taken or, if taken, the appeal has been disposed of or abandoned.

Definition

**33.—(1)** In this section, “board of inquiry” means a board of inquiry appointed by the Executive Committee under subsection (2).

Board of  
inquiry

(2) Where the Registrar receives information leading the Registrar to believe that a member of the College may be impaired, the Registrar shall make such inquiry as he or she considers appropriate and report to the Executive Committee which may, upon notice to the member of the College, appoint a board of inquiry composed of at least two members of the College and one member of the Council appointed thereto by the Lieutenant Governor in Council.

(3) The board of inquiry shall make such inquiries as it considers appropriate and may require the member of the College to submit to physical and mental examinations by such qualified persons as the board of inquiry designates, but not to more than one examination in each area of medical specialty and if the member of the College refuses or fails to submit to such examinations, the board of inquiry may order that the member's licence be suspended until he or she complies. Examination

(4) The board of inquiry shall report its findings to the Executive Committee and deliver a copy thereof and a copy of any report obtained under subsection (3) to the member of the College about whom the report is made and if, in the opinion of the Executive Committee, the evidence so warrants, the Executive Committee shall refer the matter to the Registration Committee to hold a hearing and may suspend the member's licence until the determination of whether or not the member is impaired becomes final. Hearing by Registration Committee

(5) The College, the member of the College being investigated and any other person specified by the Registration Committee are parties to a hearing before the Registration Committee under this section. Parties

(6) A legally qualified medical practitioner is not compellable to produce at the hearing his or her case histories, notes or any other records constituting medical evidence but, when required to give evidence, shall prepare a report containing the medical facts, findings, conclusions and treatment. Medical evidence

(7) The report required under subsection (6) is receivable in evidence without proof of its making or of the signature of the legally qualified medical practitioner making the report but a party who is not tendering the report as evidence has the right to summon and cross-examine the medical practitioner on the contents of the report. Idem

(8) The Registration Committee shall, after the hearing, Powers of Registration Committee

(a) make a finding as to whether or not the member of the College is impaired; and

(b) where the member of the College is found to be impaired, by order,

(i) revoke the member's licence,

(ii) suspend the member's licence either indefinitely or pending the demonstration of such facts as the Committee specifies, or



- (iii) impose such conditions and limitations upon the member's licence as the Committee considers appropriate.

Procedures

(9) Subsections 28 (5) to (15) and 29 (1), (2) and (3), which relate to proceedings of the Discipline Committee, apply with necessary modifications to proceedings of the Registration Committee under this section.

Closed to the public  
R.S.O. 1980,  
c. 484

(10) Despite the *Statutory Powers Procedure Act*, a hearing by the Registration Committee under this section shall be closed to the public but, if the member of the College who is the subject-matter of the hearing requests otherwise by a notice delivered to the Registration Committee before the day fixed for the hearing, the Registration Committee shall conduct the hearing in public except where,

- (a) matters involving public security may be disclosed; or
- (b) the possible disclosure of intimate financial or personal matters outweighs the desirability of holding the hearing in public.

Continuing jurisdiction over former member

(11) Subsections (1) to (10) apply with necessary modifications to an inquiry or hearing into whether or not a former member of the College was impaired when he or she was a member of the College, and for such purposes the board of inquiry or Registration Committee, as the case may be, may provide that the revocation or suspension of a licence or the imposition of conditions or limitations upon a licence take effect at the same time as or immediately after an existing revocation or suspension.

Stay of decision on appeal

**34.** Where the Registration Committee revokes, suspends or imposes conditions or limitations upon the licence of a member of the College on the ground that the member is impaired, the decision takes effect immediately even if an appeal is taken from the decision, unless the court to which the appeal is taken otherwise orders.

Appeal to court

**35.—(1)** A party to,

- (a) a proceeding before the Discipline Committee under section 30;
- (b) a proceeding before the Registration Committee under section 33;



- (c) a proceeding before the Accreditation Committee under section 22;
- (d) a hearing by the Board in respect of a proposal by the Registration Committee related to the issuance of a licence or the imposition of conditions or limitations on a licence; or
- (e) a hearing by the Board in respect of a proposal by the Accreditation Committee related to the issuance or renewal of a certificate of accreditation or the imposition of conditions or limitations on a certificate of accreditation,

may appeal to the Divisional Court from the decision or order of the committee or the Board.

(2) Upon the request of a party desiring to appeal to the Divisional Court and upon payment of a reasonable administrative fee therefor, the Registrar or the Executive Secretary of the Board, as the case requires, shall furnish the party with a certified copy of the record of the proceedings.

Certified  
copy of  
record

(3) An appeal under this section may be made on questions of law or fact or both and the court may affirm or may rescind the decision of the Board or the committee appealed from and may exercise all powers of the Board or the committee appealed from to take any action which the Board or the committee appealed from may take and as the court considers proper, and for such purposes the court may substitute its opinion for that of the Board or the committee appealed from or the court may refer the matter back to the Board or the committee appealed from for rehearing, in whole or in part, in accordance with such directions as the court considers proper.

Powers of  
court on  
appeal

**36.—**(1) Where the Registrar believes on reasonable ground that a member or former member of the College has committed an act of professional misconduct or serious neglect or that there is cause to refuse to issue or renew or to suspend or revoke a certificate of accreditation, the Registrar, with the approval of the Executive Committee, by order may appoint one or more persons to investigate whether such act has occurred or whether there is such cause, and the person or persons appointed shall report the results of the investigation to the Registrar.

Registrar's  
investigation

(2) For purposes relevant to the subject-matter of an investigation under this section, a person appointed to make an investigation may inquire into and examine the practice of the member or former member in respect of whom the investiga-

Powers of  
investigator

tion is being made and may, upon production of his or her appointment, enter at any reasonable time the business premises of the member or former member, make reasonable inquiries of any person and examine documents and things relevant to the subject-matter of the investigation.

Co-operation  
with  
investigator

(3) Every member and former member of the College shall co-operate fully with a person appointed to make an investigation into his or her practice.

Order by  
justice of the  
peace

(4) Where a justice of the peace is satisfied on evidence upon oath that the Registrar had grounds for appointing and by order has appointed one or more persons to make an investigation, the justice may, whether or not an investigation has been made or attempted under subsection (2), issue a warrant authorizing the person or persons making the investigation and named in the warrant, to enter any premises in which the member or former member of the College in respect of whom the investigation is being made has engaged in the practice of veterinary medicine or maintained records, to search for any documents or things relevant to the subject-matter of the investigation.

Authority to  
use force

(5) A warrant issued under subsection (4) authorizes the person or persons named in the warrant to carry out the warrant by force if necessary and together with such police officers as are called upon for assistance.

Execution of  
warrant

(6) A warrant issued under subsection (4) shall specify the hours and days during which it may be executed.

Expiry of  
warrant

(7) A warrant issued under subsection (4) shall state the date on which it expires, which shall be a date not later than fifteen days after the warrant is issued.

Application  
without  
notice

(8) A justice of the peace may receive and consider an application for a warrant under subsection (4) without notice to and in the absence of the member or former member of the College whose practice is being investigated.

Removal of  
documents  
and things

(9) Any person making an investigation under this section may, upon giving a receipt therefor, remove any documents or things examined under this section relating to the member or former member whose practice is being investigated and to the subject-matter of the investigation for the purpose of making copies or extracts and shall promptly return such documents or things to the member or former member whose practice is being investigated.

(10) Any copy or extract made as provided in subsection (9) and certified to be a true copy or extract by the person who made it is admissible in evidence to the same extent as, and has the same evidentiary value as, the document or thing of which it is a copy or extract.

Admissibility  
of copies

(11) The Registrar shall report the results of the investigation to the Council or such committee as the Registrar considers appropriate.

Report of  
Registrar

**37.—**(1) A person whose licence has been revoked for cause under this Act, or whose registration has been cancelled for cause under a predecessor of this Act, may apply in writing to the Registrar for the issuance of a licence, but the application shall not be made sooner than two years after the revocation or cancellation or one year after any prior application for issuance of the licence.

Application  
for licence  
after  
revocation

(2) A person whose licence has been suspended for cause under this Act, or whose registration has been suspended for cause under a predecessor of this Act, for more than one year or for other than a specific period, may apply in writing to the Registrar for the removal of the suspension, but the application shall not be made sooner than one year after the commencement of the suspension or one year after any prior application for the removal of the suspension.

Removal of  
suspension

(3) A person to whose licence terms, conditions or limitations have been attached for cause under this Act, or under a predecessor of this Act, may apply in writing to the Registrar for removal or alteration of the terms, conditions or limitations, but the application shall not be made sooner than one year after the commencement of the terms, conditions or limitations or one year after any prior application for removal or alteration of the terms, conditions or limitations.

Variation of  
licence  
restrictions

(4) Subsection (3) does not apply to a person whose licence is the subject of conditions or limitations imposed as a result of a proposal or decision of the Registration Committee under clause 14 (6) (c).

Exemptions

(5) The Registrar shall refer an application under subsection (1), (2) or (3) to the committee that ordered the revocation, suspension, condition or limitation, as the case may be, and the committee shall hold a hearing respecting the application.

Referral to  
committee

(6) Where the council of the Ontario Veterinary Association ordered the cancellation, suspension, term or condition under a predecessor of this Act, the Registrar shall refer the

Idem, orders  
under  
predecessor  
Act

application under subsection (1), (2) or (3) to the committee which, under this Act, would have jurisdiction over the subject-matter that resulted in the cancellation, suspension, term or condition and the committee shall hold a hearing respecting the application.

Hearing by  
Registration  
Committee

(7) Subsections 28 (5) to (15) and 29 (1), (2) and (3), which relate to hearings by the Discipline Committee, and subsection 33 (10), which relates to hearings by the Registration Committee into whether or not a member is impaired, apply with necessary modifications to proceedings of the Registration Committee under this section.

Hearing by  
Discipline  
Committee

(8) The provisions of this Act which relate to proceedings of the Discipline Committee apply to proceedings of the Discipline Committee under this section.

Parties

(9) The applicant and the College are parties to a hearing under subsection (5) or (6).

Powers of  
committee

(10) The committee shall, after the hearing under subsection (5) or (6), report its decision and reasons to the parties and direct the Registrar,

- (a) to issue the licence;
- (b) to refuse to issue the licence;
- (c) to issue the licence subject to the conditions and limitations the committee specifies;
- (d) to remove the suspension of the licence;
- (e) to refuse to remove the suspension of the licence;
- (f) to remove or alter any of the terms, conditions or limitations attached to the licence; or
- (g) to refuse to remove or alter any of the terms, conditions or limitations attached to the licence.

Confiden-  
tiality

**38.—**(1) Every person engaged in the administration of this Act, including any person making an investigation under section 36, shall preserve secrecy with respect to all matters that come to his or her knowledge in the course of his or her duties, employment, examination, review or investigation and shall not communicate any such matters to any other person except,



- (a) as may be permitted by the regulations or required in connection with the administration of this Act and the regulations and by-laws, or any proceeding under this Act or the regulations;
- (b) to his or her counsel; or
- (c) with the consent of the person to whom the information relates.

(2) No person to whom subsection (1) applies shall be required to give testimony or to produce any document or thing in any action or proceeding with regard to information obtained in the course of his or her duties, employment, examination, review or investigation except in a proceeding under this Act or the regulations. Testimony in civil action

(3) For the purposes of subsections (1) and (2), the Board, each member of the Board and each member of the staff of the Board shall be deemed to be a person engaged in the administration of this Act. Board

**39.**—(1) Where it appears to the College that any person does not comply with any provision of this Act or the regulations, despite the imposition of any penalty in respect of such non-compliance and in addition to any other rights it may have, the College may apply to a judge of the High Court for an order directing the person to comply with the provision, and upon the application the judge may make the order or such other order as the judge thinks fit. Order directing compliance

(2) An appeal lies to the Divisional Court from an order made under subsection (1). Appeal

**40.**—(1) Every person who contravenes section 11 is guilty of an offence and on conviction is liable for the first offence to a fine of not more than \$15,000 and for each subsequent offence to a fine of not more than \$30,000. Penalties

(2) Every person who is not a holder of a licence and who, Idem, use of titles

- (a) uses the title “veterinarian” or “veterinary surgeon” or an abbreviation or variation thereof as an occupational or business designation; or
- (b) uses a term, title or description that will lead to the belief that the person may engage in the practice of veterinary medicine,



is guilty of an offence and on conviction is liable for the first offence to a fine of not more than \$5,000 and for each subsequent offence to a fine of not more than \$15,000.

Idem,  
publication

(3) Every person who contravenes subsection 29 (1) or (3) is guilty of an offence and on conviction is liable to a fine of not more than \$10,000 and for each subsequent offence to a fine of not more than \$20,000.

Corporation

(4) Where a corporation is convicted of an offence under subsection (1), (2) or (3), the maximum fine that may be imposed is \$25,000 on a first conviction and \$50,000 on each subsequent conviction and not as provided in subsection (1), (2) or (3).

Offence,  
director,  
officer, etc.,  
of  
corporation

(5) Where a corporation is convicted of an offence under subsection (1), (2) or (3),

(a) each director of the corporation; and

(b) each officer, employee or agent of the corporation who was in whole or in part responsible for the conduct of that part of the business of the corporation that gave rise to the offence,

is guilty of an offence unless he or she proves, on the balance of probabilities, that he or she took all reasonable care to prevent the commission of the offence.

Idem,  
penalty

(6) Every person convicted of an offence under subsection (5) is liable on conviction to a fine of not more than \$15,000 on a first conviction and not more than \$30,000 on each subsequent conviction.

Limitation

(7) Proceedings shall not be commenced in respect of an offence under subsection (1), (2), (3) or (5) after two years after the date on which the offence was, or is alleged to have been, committed.

Falsification  
of documents

**41.—**(1) Any person who makes or causes to be made a wilful falsification in a matter relating to a register or directory or issues a false licence, certificate of accreditation or document with respect to the issuance of a licence or certificate of accreditation is guilty of an offence and on conviction is liable to a fine of not more than \$5,000.

Offences for  
false  
representation

(2) Every person who wilfully procures or attempts to procure the issuance of a licence or a certificate of accreditation under this Act by knowingly making a false representation or declaration or by making a fraudulent representation or decla-

ration, either orally or in writing, is guilty of an offence and on conviction is liable to a fine of not more than \$5,000.

(3) Proceedings to obtain a conviction for an offence under subsection (1) or (2) shall not be commenced after the expiration of one year after the date on which the offence was, or is alleged to have been, committed. Limitation period

**42.** Where licensing or acting under and in accordance with a certificate of accreditation under this Act is required to permit the lawful doing of an act or thing, if in any prosecution it is proven that the defendant has done the act or thing, the burden of proving that he or she was so licensed or that he or she acted under and in accordance with a certificate of accreditation under this Act rests upon the defendant. Onus of proof respecting licensing

**43.—**(1) A notice or document under this Act or the regulations is sufficiently given, served or delivered if delivered personally or by mail. Service of notice or document

(2) Where a notice or document under this Act or the regulations is sent to a person by mail addressed to the person at the last address of the person in the records of the College, there is a rebuttable presumption that the notice or document is delivered to the person on the fifth day after the day of mailing. Idem

**44.** Any statement containing information from the records required to be kept by the Registrar under this Act and purporting to be certified by the Registrar under the seal of the College is admissible in evidence in all courts and tribunals as proof in the absence of evidence to the contrary of the facts stated therein without proof of the appointment or signature of the Registrar and without proof of the seal. Registrar's certificate as evidence

**45.—**(1) No action or other proceeding for damages shall be instituted against the Board, the College, the Council, a committee of the College or a member of the Board, the Council or a committee of the College, or an officer, employee, agent or appointee of the Board or of the College for any act done in good faith in the performance or intended performance of a duty or in the exercise or the intended exercise of a power under this Act, a regulation or a by-law, or for any neglect or default in the performance or exercise in good faith of such duty or power. Immunity

(2) Every member of the Council or a committee of the College and every officer and employee of the College, and their heirs, executors and administrators, and estate and effects, respectively, shall from time to time and at all times, Councillor indemnified in suits respecting duties of office

be indemnified and saved harmless out of the funds of the College, from and against,

- (a) all costs, charges and expenses whatsoever that he or she sustains or incurs in or about any action or proceeding brought or commenced against him or her in respect of any act, deed, matter or thing whatsoever, made, done or permitted by him or her, in or about the execution of the duties of his or her office; and
- (b) all other costs, charges and expenses that he or she sustains or incurs in or about or in relation to the affairs thereof,

except such costs, charges or expenses as are occasioned by his or her own wilful neglect or default.

Limitation of  
action

**46.** Proceedings shall not be commenced against a member of the College for damages arising from the provision of a service that is within the practice of veterinary medicine after one year from the date when the person commencing the action knew or ought to have known the fact or facts upon which the allegations are based.

Application  
of  
R.S.O.1980,  
c. 95

**47.—(1)** The *Corporations Act* does not apply in respect of the College except for the following sections of that Act which shall apply with necessary modifications in respect of the College:

- 1. Section 81 (liability for wages).
- 2. Section 94 (auditors) and, for the purpose, the Minister shall be deemed to be the Minister referred to in the section.
- 3. Subsection 95 (1) (auditor's qualifications) and, for the purpose, the subsection shall be deemed not to include,
  - i. the exception as provided in subsection 95 (2), and
  - ii. the reference to an affiliated company.
- 4. Section 96 (auditor's functions).
- 5. Subsection 97 (1), exclusive of clause 97 (1) (b), (auditor's report) and, for the purpose, the College shall be deemed to be a private company.

6. Subsection 97 (2) (designation of statements).
7. Subsection 97 (3) (auditor's report).
8. Section 122 (liability of members).
9. Section 276 (holding of land) and, for the purpose, the Minister shall be deemed to be the Minister referred to in the section.
10. Section 280 (making contracts).
11. Section 281 (power of attorney).
12. Section 282 (authentication of documents) except in respect of information from the records required to be kept by the Registrar.
13. Section 292 (validity of acts of directors).
14. Section 293 (annual meetings).
15. Section 297 (directions by a court as to holding a meeting).
16. Section 299 (minutes of meetings).
17. Section 302 (books of account).
18. Section 303 (untrue entries) and, for the purpose, the section shall be deemed not to refer to section 41 of that Act.
19. Section 304 (place of keeping and inspection of records) and, for the purpose,
  - i. the section shall be deemed not to refer to sections 41 (register of transfers) and 43 (registers of transfers) of that Act, and
  - ii. the Minister shall be deemed to be the Minister referred to in the section.
20. Section 305 (inspection of records) and, for the purpose, the section shall be deemed not to refer to creditors and to refer to section 41 of that Act.
21. Section 310 (investigations and audits).

22. Section 329 (removal of proceedings into the Supreme Court).
23. Section 330 (appeals).
24. Section 331 (untrue statements) and, for the purpose,
  - i. the section shall be deemed not to refer to regulations made under that Act, and
  - ii. the Minister shall be deemed to be the Minister referred to in the section and the Deputy Minister of the Ministry presided over by the Minister under this Act shall be deemed to be the Deputy Minister referred to in the section.
25. Section 333 (orders by court) and, for the purpose, the section shall be deemed not to refer to creditors.

## Interpretation

(2) For the purposes of subsection (1), a member of the College shall be deemed to be a shareholder and a member of the Council shall be deemed to be a director.

Non-application of  
R.S.O. 1980,  
c. 96

(3) The *Corporations Information Act* does not apply in respect of the College.

## Repeal

**48.**—(1) The *Veterinarians Act*, being chapter 522 of the Revised Statutes of Ontario, 1980, is repealed.

## Idem

(2) Any reference in any Act or regulation to a veterinarian as a member of the Ontario Veterinary Association under the *Veterinarians Act* shall be deemed to be a reference to a member of the College under this Act.

Commence-  
ment

**49.** This Act comes into force on a day to be named by proclamation of the Lieutenant Governor.

## Short title

**50.** The short title of this Act is the *Veterinarians Act, 1989*.



# Bill 39

(Chapter 60  
*Statutes of Ontario, 1989*)

## An Act to revise the Veterinarians Act

The Hon. D. Ramsay  
*Minister of Agriculture and Food*



<i>1st Reading</i>	June 29th, 1989
<i>2nd Reading</i>	November 22nd, 1989
<i>3rd Reading</i>	November 29th, 1989
<i>Royal Assent</i>	December 6th, 1989



Bill 39

1989

## An Act to revise the Veterinarians Act

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HER MAJESTY, by and with the advice and consent of the Legislative Assembly of the Province of Ontario, enacts as follows:

**1.—(1)** In this Act,

Definitions

R.S.O. 1980,  
c. 196

“Board” means the Health Disciplines Board under the *Health Disciplines Act*;

“by-laws” means the by-laws made under this Act;

“certificate of accreditation” means a certificate of accreditation issued under this Act to establish or operate a veterinary facility;

“College” means the College of Veterinarians of Ontario;

“Council” means the Council of the College;

“drug” means drug as defined in Part VI of the *Health Disciplines Act*;

“impaired”, in relation to a person, means suffering from a physical or mental condition or disorder of a nature and extent that adversely affects the person’s ability to practice veterinary medicine;

“licence” means a licence to engage in the practice of veterinary medicine issued under this Act;

“Minister” means the Minister of Agriculture and Food;

“practice of veterinary medicine” includes the practice of dentistry, obstetrics including ova and embryo transfer, and surgery, in relation to an animal other than a human being;

“Registrar” means the Registrar of the College;

“regulations” means the regulations made under this Act;

“veterinary facility” means a building, land or vehicle or any combination of them used or intended to be used as a place in or from which to engage in the practice of veterinary medicine.

Hearings and  
submissions  
R.S.O. 1980,  
c. 484

(2) Despite the *Statutory Powers Procedure Act*, no board, committee, person or group of persons shall be required to hold a hearing or to afford to any person an opportunity to appear or to make submissions before making a decision or proposal, giving a direction or otherwise disposing of a matter under this Act except to the extent that a hearing or an opportunity to appear or to make submissions is specifically required by this Act.

**2.** The Ontario Veterinary Association, a body corporate, Name  
is continued as a corporation without share capital under the  
name of "College of Veterinarians of Ontario".

**3.—(1)** The principal object of the College is to regulate Objects  
the practice of veterinary medicine and to govern its members  
in accordance with this Act, the regulations and the by-laws in  
order that the public interest may be served and protected.

**(2)** For the purpose of carrying out its principal object, the Idem  
College has the following additional objects:

1. To establish, maintain and develop standards of knowledge and skill among its members.
2. To establish, maintain and develop standards of qualification and standards of practice for the practice of veterinary medicine.
3. To establish, maintain and develop standards of professional ethics among its members.
4. To promote public awareness of the role of the College.
5. To perform such other duties and exercise such other powers as are imposed or conferred on the College under any Act.

**(3)** For the purpose of carrying out its objects, the College Capacity and powers of College  
has the capacity and the powers of a natural person.

**4.—(1)** The council of the Ontario Veterinary Association Council  
is continued as the Council of the College and shall be the  
governing body and board of directors of the College and  
shall manage and administer its affairs.

**(2)** The Council shall be composed of, Composition

- (a) not fewer than nine and not more than fifteen persons who are members of the College and are elected by the members of the College in the number and manner provided by by-law of the Council; and
- (b) not fewer than three and not more than five persons who are not members of the governing body of a self-regulating licensing body under any other Act or licensed under this Act and who are appointed by the Lieutenant Governor in Council.



Remuneration of lay members

(3) The persons appointed under clause (2) (b) shall be paid, out of the moneys appropriated therefor by the Legislature, such expenses and remuneration as are determined by the Lieutenant Governor in Council.

Term of office

(4) The term of an appointment under clause (2) (b) must not exceed three years.

Reappointment

(5) A person whose appointment under clause (2) (b) expires is eligible for reappointment but no person shall be appointed and reappointed for more than six consecutive years.

Qualifications

(6) Every member of the College who,

- (a) practises or resides in Ontario;
- (b) is the holder of a licence that is not limited to the practice of veterinary medicine for educational purposes only;
- (c) is not in default of an annual fee prescribed by the regulations; and
- (d) is not in default of filing a return required by the regulations,

is qualified to vote at an election of members of the Council for the constituency to which the member of the College belongs.

Officers

(7) The Council shall elect annually a president and one or more vice-presidents of the College from among the elected members of the Council.

Registrar and staff

(8) The Council shall appoint a Registrar, and the Executive Committee may appoint such other persons as are from time to time necessary or desirable in the opinion of the Executive Committee to perform the work of the College.

Quorum

(9) A majority of the members of the Council constitutes a quorum.

Vacancies

(10) Where one or more vacancies occur in the membership of the Council, the members remaining in office constitute the Council so long as their number is not fewer than a quorum.

Continuation of council members

(11) The members of the council of the Ontario Veterinary Association who were in office immediately before the coming into force of this Act shall continue in office until the expira-

tion of their terms or until their offices otherwise become vacant.

**5.—**(1) Every person who holds a licence is a member of the College subject to any conditions and limitations to which the licence is subject. Membership

(2) A member may resign his or her membership by filing with the Registrar a resignation in writing and the member's licence is thereupon cancelled. Resignation of membership

(3) The Registrar may cancel a licence for non-payment of any fee prescribed by the regulations or for failure to file a return required by the regulations after giving the member at least two months notice of the default and intention to cancel. Cancellation for default of fees

(4) A person whose licence is cancelled, revoked or suspended remains subject to the continuing jurisdiction of the College in respect of, Continuing jurisdiction

(a) an investigation or disciplinary action arising out of his or her conduct while a member; and

(b) an inquiry or proceeding related to whether the person is impaired.

**6.** In addition to the Minister's other powers and duties under this Act, the Minister may, Powers of Minister

(a) review the activities of the Council;

(b) request the Council to undertake activities that, in the opinion of the Minister, are necessary and advisable to carry out the intent of this Act;

(c) advise the Council with respect to the implementation of this Act and the regulations and with respect to the methods used or proposed to be used by the Council to implement policies and to enforce its regulations and procedures;

(d) request the Council to make, amend or revoke regulations respecting any matter under section 7 or the standards for veterinary facilities established under section 8.

**7.—**(1) Subject to the approval of the Lieutenant Governor in Council and with prior review by the Minister, the Council may make regulations with respect to the following matters: Regulations

1. Prescribing classes of licences and governing the qualifications and requirements for the issuance of licences or any class thereof and prescribing the conditions and limitations thereof.
2. Respecting any matter ancillary to the provisions of this Act with regard to the issuance, cancellation, suspension and revocation of licences.
3. Respecting any matter ancillary to the provisions of this Act with regard to the issuance, renewal, suspension and revocation of certificates of accreditation.
4. Prescribing classes of certificates of accreditation and governing the qualifications and requirements for the issuance and renewal of certificates of accreditation or any class thereof and prescribing the conditions and limitations thereof.
5. Providing for the designation of members of the College as specialists, prescribing the qualifications and requirements for designation as a specialist, providing for the suspension or revocation of such a designation and for the regulation and prohibition of the use of the designation by members of the College.
6. Governing the use of names and designations in the practice of veterinary medicine by members of the College.
7. Authorizing entries in, and the form of maintenance of, registers of members and former members of the College and directories of veterinary facilities and providing for the issuance of certificates of standing by the Registrar.
8. Prescribing and governing standards of practice for the profession.
9. Regulating the compounding, dispensing and sale of drugs by members of the College, and the containers and labelling of drugs compounded, dispensed or sold by members, and prescribing the records that shall be kept in respect of such compounding, dispensing and sale.

10. Establishing a special category of membership for retired members and determining the rights, privileges, duties and obligations of such members.
11. Respecting the promotion or advertising of the practice of veterinary medicine.
12. Prohibiting the practice of veterinary medicine where there is a conflict of interest and defining conflict of interest for the purpose.
13. Defining professional misconduct for the purposes of this Act.
14. Respecting the reporting and publication of decisions in disciplinary matters.
15. Requiring the payment of annual fees by members of the College, fees for processing applications, licensing, certificates, examinations and inspections, including penalties for late payment, prompt payment discounts and interest on late payments and fees for anything the Registrar is required or authorized to do, and prescribing the amounts thereof.
16. Requiring the making of returns of information by members of the College in respect of names, addresses, telephone numbers, professional associates, partners, employees and professional activities.
17. Providing for the compilation of statistical information on the supply, distribution, professional liability insurance and professional activities of members of the College and requiring members to provide the information necessary to compile such statistics.
18. Requiring and providing for the inspection of veterinary facilities and of the records kept by members of the College in connection with the practice of veterinary medicine.
19. Authorizing the communication of material that comes to a person's knowledge in the course of duties, employment, examination, review or investigation to specified classes of persons or for specified purposes.

20. Respecting the duties and authority of the Registrar.
21. Prescribing and requiring the making and keeping of records by members of the College in respect of the practice of veterinary medicine.
22. Exempting any member of the College from any provision of the regulations under such special circumstances in the public interest as the Council considers advisable.
23. Providing that any form required under this Act be in a form approved by the Registrar.

Application (2) A regulation made under subsection (1) may be general or particular in its application.

Adoption of accreditation (3) For the purpose of prescribing the qualifications and requirements for the issuance of licences or the issuance and renewal of certificates of accreditation, the Council, in a regulation under subsection (1) or a standard under subsection 8 (1), may adopt as its own the recognition or accreditation granted by any organization specified by the Council.

Distribution of regulations (4) The Council shall,

- (a) forward a copy of each regulation made under subsection (1) to each member of the College; and
- (b) keep a copy of each regulation made under subsection (1) available for public inspection in the office of the College.

Regulations by Lieutenant Governor in Council (5) Where the Minister requests in writing under clause 6 (d) that the Council make, amend or revoke a regulation or standard and the Council has failed to do so within sixty days after the request, the Lieutenant Governor in Council may make regulations respecting the subject-matter set out in the request.

Conflicting provisions (6) In cases of conflict, a regulation made under subsection (5) prevails over a regulation or standard made under subsection (1) or 8 (1) respectively.

Standards for veterinary facilities **8.—**(1) The Council may establish standards for veterinary facilities not inconsistent with this Act and the regulations which must be met in order to qualify for the issuance or renewal of a certificate of accreditation or any class thereof.



(2) The Council shall forward a copy of the standards established under subsection (1) to the Minister and to each member of the College and shall keep a copy available for public inspection in the office of the College.

Distribution  
of standards

**9.**—(1) The Council may pass by-laws relating to the administrative and domestic affairs of the College not inconsistent with this Act and the regulations and, without limiting the generality of the foregoing, may pass by-laws respecting the following matters:

By-laws

1. Prescribing the seal and other insignia of the College and providing for their use.
2. Providing for the execution of documents by the College.
3. Respecting banking and finance.
4. Fixing the financial year of the College and providing for the audit of the accounts and transactions of the College.
5. Prescribing the number of vice-presidents of the College, prescribing procedures for the election of the president and vice-presidents and for the filling of vacancies in those offices.
6. Respecting the calling, holding and conducting of meetings of the Council and the duties of members of the Council.
7. Respecting the calling, holding and conducting of meetings of the membership of the College.
8. Providing for the remuneration of members of the Council and members of committees other than members appointed by the Lieutenant Governor in Council, and providing for payment of necessary expenses of the Council and committees in the conduct of their business.
9. Providing for the appointment, composition, powers, duties and quorums of additional or special committees.
10. Providing for the appointment of persons to make investigations for the purposes of this Act.

11. Providing procedures for the making, amending and revoking of by-laws.
12. Respecting management of the property of the College.
13. Respecting the application of the funds of the College and the investment and reinvestment of any of its funds not immediately required, and for the safe-keeping of its securities.
14. Respecting the borrowing of money by the College and the giving of security therefor.
15. Respecting membership of the College in other organizations the objects of which are not inconsistent with and are complementary to those of the College, the payment of annual assessments and provision for representatives at meetings.
16. Delegating to the Executive Committee the powers and duties set out in the by-laws, but this paragraph does not authorize the delegation of the power to make, amend or revoke a regulation or a by-law.
17. Fixing the number of members to be elected to the Council under clause 4 (2) (a) and defining constituencies, and prescribing the number of representatives.
18. Respecting and governing the qualifications, nomination, election and term or terms of office of the members to be elected to the Council, and controverted elections.
19. Prescribing the conditions disqualifying elected members from sitting on the Council and governing the filling of vacancies on the Council.

Signed by-laws and resolutions

(2) A by-law or resolution of the Council signed by a majority of the members of the Council is as valid as if passed at a meeting of the Council held for that purpose.

Confirmation of by-laws

(3) A by-law passed by the Council is not effective until confirmed by the members of the College at a meeting or by means of a vote conducted by mail.

Distribution of by-laws

(4) The Council shall,

- (a) forward a copy of each by-law confirmed under subsection (3) to the Minister and to each member of the College; and
- (b) keep a copy of each by-law confirmed under subsection (3) available for public inspection in the office of the College.

(5) Subsection (3) does not apply to a by-law passed within four months after this Act comes into force. Application of subs. (3)

**10.**—(1) The following committees are hereby established: Establishment of committees

- 1. Executive Committee.
- 2. Accreditation Committee.
- 3. Registration Committee.
- 4. Complaints Committee.
- 5. Discipline Committee.

(2) The Council shall appoint the committees referred to in subsection (1) and may establish and appoint such other committees as it considers necessary. Idem

(3) Where one or more vacancies occur in the membership of a committee, the members remaining in office constitute the committee so long as their number is not fewer than the prescribed quorum. Vacancies

(4) The Council shall name one member of each committee to chair the committee. Person to chair

(5) No person shall be appointed and reappointed to the same committee for more than six consecutive years. Term

**11.**—(1) No person shall engage in the practice of veterinary medicine or hold himself, herself or itself out as engaging in the practice of veterinary medicine unless the person is the holder of a licence. Licence required

(2) Subsection (1) does not apply to prevent a person, Exceptions

- (a) from rendering first aid or temporary assistance in an emergency without fee;
- (b) from treating an animal if the person is the owner of the animal, is a member of the household of the

owner of the animal or is employed for general agricultural or domestic work by the owner of the animal;

- (c) from taking blood samples;
- (d) from preventing or treating fish and invertebrate diseases;
- (e) from collecting or using semen under the authority of a licence issued under the *Artificial Insemination of Live Stock Act*;
- (f) from collecting or transporting ova and embryos of animals other than mammals.

R.S.O. 1980,  
c. 29

Idem,  
student

(3) Subsection (1) does not apply to a student of veterinary medicine to the extent that the student is engaging in the undergraduate curriculum of studies at the Ontario Veterinary College of the University of Guelph.

Interpretation  
of owner

(4) For the purpose of clause (2) (b), a person is not the owner of an animal if the person buys the animal, treats it and resells it or intended to resell it to either the person who sold it to him or her or to that person's nominee.

Proof of  
practice

(5) For the purposes of this section, proof of the performance of one act in the practice of veterinary medicine on one occasion is sufficient to establish engaging in the practice of veterinary medicine.

Application  
of Part VI of  
R.S.O. 1980,  
c. 196

(6) Part VI of the *Health Disciplines Act* does not apply to prevent a person who holds a licence from compounding, dispensing or selling drugs in the course of engaging in the practice of veterinary medicine.

Application  
of  
R.S.O. 1980,  
c. 248

(7) The *Live Stock Medicines Act* does not apply to prevent a person who holds a licence from selling a drug in the course of engaging in the practice of veterinary medicine to an owner of live stock for the treatment of live stock.

Executive  
Committee

**12.—(1)** The Executive Committee shall be composed of five members of the Council, including,

- (a) the president and one or two vice-presidents of the College; and
- (b) not more than three other members of the Council of whom one shall be a member of the Council

appointed to the Council by the Lieutenant Governor in Council.

(2) Three members of the Executive Committee constitute a quorum. Quorum

(3) The Executive Committee shall perform such functions of the Council as are delegated to it by the Council, the by-laws or this Act. Functions

(4) Subject to ratification by the Council at its next meeting, the Executive Committee, between meetings of the Council, may perform any other function of the Council that, in the opinion of the Executive Committee, must be performed immediately. Other functions

(5) Subsection (4) does not apply to authorize the Executive Committee to make, amend or revoke a regulation, a by-law or a standard described under subsection 8 (1). Limitation

**13.—**(1) The Registration Committee shall be composed of five persons of whom, Registration Committee

- (a) not fewer than three shall be members of the Council elected to the Council by the members of the College;
- (b) one shall be a member of the Council appointed to the Council by the Lieutenant Governor in Council; and
- (c) one may be a member of the College who is not a member of the Council.

(2) Three members of the Registration Committee constitute a quorum. Quorum

**14.—**(1) Subject to subsections (2) and (3), the Registrar shall issue a licence to any person who applies therefor in accordance with the regulations and who meets the qualifications and requirements prescribed by the regulations. Issuance of licence

(2) The Registrar shall refuse to issue a licence where, in the opinion of the Registrar, Grounds for refusal

- (a) the applicant does not meet the qualifications and requirements for the issuance of the licence;
- (b) the past conduct of the applicant affords reasonable ground for believing that the applicant will not



engage in the practice of veterinary medicine with honesty and integrity; or

- (c) there is reasonable ground for believing that the applicant is impaired.

Referral to  
Registration  
Committee

(3) The Registrar, on his or her own initiative, may refer and on the request of the applicant shall refer the application to the Registration Committee for a determination as to any of the matters mentioned in clauses (2) (a), (b) and (c).

Power of  
Registration  
Committee

(4) The Registration Committee shall determine the eligibility of applicants for licences referred to the Registration Committee under subsection (3) and may in any such case require an applicant to obtain such additional experience, education or training as the Registration Committee specifies.

Exemption

(5) The Registration Committee may exempt an applicant from compliance with any qualification or requirement for a licence.

Directions to  
Registrar

(6) The Registration Committee, after considering an application for a licence, may direct the Registrar,

- (a) to issue the licence;
- (b) to refuse to issue the licence; or
- (c) to issue the licence subject to the conditions and limitations the Registration Committee specifies.

Certificate of  
accreditation  
required

**15.** No person shall establish or operate a veterinary facility except under and in accordance with a certificate of accreditation.

Accreditation  
Committee

**16.—(1)** The Accreditation Committee shall be composed of five persons of whom,

- (a) not fewer than three shall be members of the Council elected to the Council by the members of the College;
- (b) one shall be a member of the Council appointed to the Council by the Lieutenant Governor in Council; and
- (c) one may be a member of the College who is not a member of the Council.

(2) Three members of the Accreditation Committee constitute a quorum. Quorum

**17.**—(1) Subject to subsections (2) and (3), the Registrar shall issue or renew a certificate of accreditation upon the application of a member of the College who applies therefor if the applicant and the veterinary facility meet the qualifications, requirements and standards prescribed by the regulations and by the Council for the proposed veterinary facility. Issuance of certificate of accreditation

(2) The Registrar shall refuse to issue or renew a certificate of accreditation where, in the opinion of the Registrar, the applicant or the veterinary facility does not meet the qualifications, requirements and standards prescribed by the regulations and by the Council for the proposed veterinary facility. Grounds for refusal

(3) The Registrar, on his or her own initiative, may refer and on the request of the applicant shall refer the application to the Accreditation Committee for a determination as to whether or not the applicant or the facility or both meet the qualifications, requirements and standards prescribed by the regulations and by the Council for the proposed veterinary facility. Referral to Accreditation Committee

(4) The Accreditation Committee may exempt an applicant or veterinary facility from compliance with any qualification, requirement or standard for a certificate of accreditation. Exemption

(5) The Accreditation Committee shall determine the eligibility of applicants and facilities for certificates of accreditation that are referred to the Accreditation Committee under subsection (3) and, after considering an application for the issuance or renewal of a certificate of accreditation, may direct the Registrar, Directions to Registrar

- (a) to issue or to renew the certificate of accreditation;
- (b) to refuse to issue or to renew the certificate of accreditation; or
- (c) to issue or to renew the certificate of accreditation subject to the conditions and limitations the Accreditation Committee specifies.

**18.**—(1) Where, Hearing by Board

- (a) the Registration Committee proposes to direct the Registrar to refuse to issue a licence or proposes to direct the Registrar to issue a licence subject to conditions or limitations; or

- (b) the Accreditation Committee proposes to direct the Registrar to refuse to issue or to refuse to renew a certificate of accreditation, or proposes to direct the Registrar to issue or to renew a certificate of accreditation subject to conditions or limitations,

the Registrar on behalf of the committee shall serve notice of the proposal, together with written reasons therefor, on the applicant and shall send a copy of the proposal and the written reasons to the Board.

Exception

(2) Subsection (1) does not apply in respect of a proposal to refuse to issue a licence where the applicant previously held a licence that was suspended or revoked as a result of a decision of the Discipline Committee, a decision of the Registration Committee or a decision of the council of the Ontario Veterinary Association under a predecessor of this Act.

Right to a hearing or review

(3) The applicant is entitled to a hearing by the Board, or to a review by the Board of his or her application and documentary evidence in support thereof without oral evidence, if the applicant mails or delivers within fifteen days after the notice under subsection (1) is served on the applicant, notice in writing to the Board requiring the hearing or the review by the Board, as the applicant specifies.

Notice of right to hearing or review

(4) The notice under subsection (1) shall inform the applicant of the right to a hearing or review by the Board as set out in subsection (3).

Powers of committee where no hearing or review

(5) Where an applicant does not require a hearing or review by the Board in accordance with subsection (3), the Board shall so notify the committee making the proposal and the committee may carry out the proposal stated in its notice under subsection (1).

Hearing by Board

(6) Where an applicant requires a hearing by the Board in accordance with subsection (3), the Board shall appoint a time for, give notice of and hold the hearing.

Review by Board

(7) Where an applicant requires a review by the Board in accordance with subsection (3), the Board shall review the application and documentary evidence in support thereof without oral evidence.

Findings of fact

(8) The findings of fact of the Board pursuant to a hearing or review shall be based exclusively on evidence admissible or matters that may be noticed under sections 15 and 16 of the *Statutory Powers Procedure Act*.

(9) Three members of the Board constitute a quorum for the purpose of a proceeding under this section. Quorum

(10) The Board shall, after the hearing or review in respect of a licence, Powers of Board re licence

- (a) confirm the proposed decision of the Registration Committee;
- (b) require the Registration Committee to direct the Registrar to issue a licence of the appropriate class subject to such conditions and limitations as the Board considers appropriate in cases where the Board finds that the applicant meets the qualifications and requirements for registration and that the Committee has exercised its powers improperly; or
- (c) refer the matter back to the Registration Committee for further consideration, and the Board may make such recommendations as it considers appropriate in the circumstances.

(11) The Board shall, after the hearing or review in respect of a certificate of accreditation, Powers of Board re certificate of accreditation

- (a) confirm the proposed decision of the Accreditation Committee;
- (b) require the Accreditation Committee to direct the Registrar to issue or renew a certificate of accreditation for the appropriate class of veterinary facility subject to such conditions and limitations as the Board considers appropriate in cases where the Board finds that the applicant and the veterinary facility meet the qualifications, requirements and standards for the issuance or renewal of the certificate of accreditation and that the Committee has exercised its powers improperly; or
- (c) refer the matter back to the Accreditation Committee for further consideration, and the Board may make such recommendations as it considers appropriate in the circumstances.

(12) The Board may extend the time for the giving of notice requiring a hearing by an applicant under this section before or after the expiration of such time where it is satisfied that there are apparent grounds for granting relief to the applicant and that there are reasonable grounds for applying Extension of time for requiring hearing

for the extension, and the Board may give such directions as it considers proper consequent upon the extension.

Parties

(13) The College and the applicant who has required the hearing are parties to proceedings before the Board under this section.

Prohibitions  
on  
publication  
and identifi-  
cation

(14) Section 29, which relates to proceedings of the Discipline Committee, applies with necessary modifications to a hearing by the Board under this section.

Examination  
of  
documentary  
evidence

(15) A party to a hearing under this section shall be afforded an opportunity to examine before the hearing any written or documentary evidence that will be produced or any report the contents of which will be given in evidence at the hearing.

Members  
holding  
hearing or  
review not to  
have taken  
part in  
investigation,  
etc.

(16) Members of the Board holding a hearing or review shall not have taken part before the hearing or review in any investigation or consideration of the subject-matter of the hearing or review other than at a previous hearing or review of the Board and shall not communicate directly or indirectly in relation to the subject-matter of the hearing or review with any person or with any party or any party's representative except upon notice to and opportunity for all parties to participate, but the Board may seek legal advice from an adviser independent from the parties and, in such case, the nature of the advice shall be made known to the parties in order that they may make submissions as to the law.

Recording of  
evidence

(17) The oral evidence taken before the Board at a hearing shall be recorded and, if so required, copies of a transcript of the oral evidence shall be furnished upon the same terms as in the Supreme Court.

Only  
members at  
hearing to  
participate in  
decision

(18) No member of the Board shall participate in a decision of the Board following upon a hearing unless he or she was present throughout the hearing and heard the evidence and argument of the parties.

Release of  
documentary  
evidence

(19) Documents and things put in evidence at a hearing shall, upon the request of the person who produced them, be released to the person within a reasonable time after the matter in issue has been finally determined.

Registers

**19.—**(1) The Registrar shall maintain one or more registers in which is entered,

(a) the name of every person to whom a licence is issued;



- (b) any designation of a member of the College as a specialist and any withdrawal of recognition of the member's specialist status;
- (c) any conditions or limitations imposed on a licence by a committee;
- (d) any revocation, suspension, cancellation or termination of a licence;
- (e) the fact and amount of a fine imposed by the Discipline Committee and the fact of a reprimand by the Discipline Committee, unless the Discipline Committee directs that no entry be made;
- (f) where an entry results from a decision of a committee, the name of the committee that made the decision and any finding of the committee resulting in the entry;
- (g) the date of the decision or order that results in an entry under this subsection; and
- (h) any other information authorized to be entered by the regulations.

(2) The Registrar shall maintain one or more directories in which is entered the name of every person who is the holder of a certificate of accreditation identifying the location and class of the veterinary facility for which the certificate of accreditation is issued, the conditions and limitations attached to the certificate of accreditation, the date of expiry of the certificate of accreditation, every revocation or suspension of a certificate of accreditation and any other information authorized to be entered by the regulations.

Directories

(3) Any person has the right, during normal business hours, to inspect the registers and directories maintained by the Registrar.

Inspection

(4) The Registrar may maintain the registers and directories mentioned in subsections (1) and (2) in the form of books or may maintain them in any electronic or other medium that provides a visual display of recorded information.

Form of registers and directories

**20.** Every person who is a member, other than a life member, of the Ontario Veterinary Association immediately before this Act comes into force shall be deemed to be the holder of a licence that is subject to the terms, conditions and

Continuation of memberships

limitations that applied to the person's registration, and is a member of the College.

Continuation  
of certificates  
of accredi-  
tation

**21.** Every certificate of accreditation issued under the *Veterinarians Act*, being chapter 522 of the Revised Statutes of Ontario, 1980, and in force immediately before this Act comes into force shall be deemed to be a certificate of accreditation issued under this Act that is subject to the terms, conditions and limitations that applied to it immediately before the coming into force of this Act.

Referral of  
certificate of  
accreditation

**22.—(1)** The Registrar may refer a certificate of accreditation to the Accreditation Committee where the Registrar is of the opinion that there is reasonable ground for believing that,

- (a) the holder of the certificate of accreditation or the veterinary facility in respect of which the certificate of accreditation was issued has ceased to meet the qualifications, requirements and standards prescribed by the regulations and by the Council for the issuance or renewal of the certificate of accreditation;
- (b) the veterinary facility in respect of which the certificate of accreditation was issued is being used or has been used in contravention of a term, condition or limitation of the certificate of accreditation; or
- (c) the veterinary facility in respect of which the certificate of accreditation was issued is being used or has been used as a veterinary facility of a class other than the class for which the certificate of accreditation was issued or renewed.

Hearing

(2) The Accreditation Committee shall appoint a time for, give notice of and hold a hearing to determine the allegation in respect of the certificate of accreditation or the holder thereof.

Powers of  
Accreditation  
Committee

(3) Where the Accreditation Committee finds that an allegation mentioned in clause (1) (a), (b) or (c) is valid, the Accreditation Committee may, by order,

- (a) revoke the certificate of accreditation;
- (b) suspend the certificate of accreditation for a stated period not exceeding two years;
- (c) suspend the certificate of accreditation pending the demonstration, in such manner as the Committee

specifies, of compliance with such standards as are specified by the Committee;

- (d) change the class of veterinary facility authorized by the certificate of accreditation; or
- (e) impose such conditions and limitations or such further conditions and limitations on the certificate of accreditation as are specified by the Committee,

or any combination thereof.

(4) Subsections 28 (5) to (15) and section 29, which relate to proceedings before the Discipline Committee, apply with necessary modifications to proceedings before the Accreditation Committee under subsection (2). Procedures

(5) The College and the holder of the certificate of accreditation in respect of which the hearing is held are parties to the hearing before the Accreditation Committee under subsection (2). Parties

(6) The jurisdiction of the Discipline Committee is not affected by the commencement of proceedings or the making of an order under this section. Other proceedings

**23.—**(1) The Complaints Committee shall be composed of not fewer than three and not more than ten persons of whom, Complaints Committee

- (a) at least one is a member of the Council appointed to the Council by the Lieutenant Governor in Council; and
- (b) the others are members of the College, of whom at least one, but not the majority, is a member of the Council.

(2) A member of the Complaints Committee who takes part in the consideration or investigation of a complaint regarding the conduct of a member or former member of the College is not eligible to take part as a member of the Discipline Committee in proceedings before the Discipline Committee in respect of the same conduct of the member or former member of the College. Eligibility

(3) A majority of the members of the Complaints Committee, one of whom is a person appointed to the Council by the Lieutenant Governor in Council, constitutes a quorum. Quorum

Duties of  
Complaints  
Committee

**24.—**(1) The Complaints Committee shall consider and investigate complaints made by members of the public or members of the College regarding the conduct of a member or former member of the College, but no action shall be taken by the Committee under subsection (2) unless,

- (a) a written complaint has been filed with the Registrar and the member or former member whose conduct is being investigated has been notified of the complaint and given at least two weeks in which to submit in writing to the Committee any explanations or representations the member or former member may wish to make concerning the matter; and
- (b) the Committee has examined or has made every reasonable effort to examine all records and other documents relating to the complaint.

Idem .

(2) The Complaints Committee in accordance with the information it receives may,

- (a) direct that the matter be referred, in whole or in part, to the Discipline Committee or, for the purposes of section 33, be brought to the attention of the Registrar;
- (b) direct that the matter not be referred to the Discipline Committee or brought to the attention of the Registrar under clause (a); or
- (c) take such action as it considers appropriate in the circumstances and that is not inconsistent with this Act or the regulations or by-laws.

Decision and  
reasons

(3) The Complaints Committee shall give its decision in writing to the Registrar and, where the decision is made under clause (2) (b) or (c), its reasons therefor.

Advice

(4) The Complaints Committee may require the member or former member whose conduct was considered or investigated by the Committee to appear before the Committee and the Committee may provide the member or former member with advice in respect of the practice of veterinary medicine.

Complaints

**25.—**(1) Where the Complaints Committee has made a disposition of a complaint respecting a member or former member of the College under section 24, the Registrar shall send to the member or former member and to the complainant, by prepaid first class mail, a copy of the written decision

made by the Committee including reasons therefor, if any, together with notice advising of the right of review under subsection (2).

(2) A complainant or the member or former member of the College complained against who is not satisfied with the decision made by the Complaints Committee disposing of a complaint, except a decision to refer a matter to the Discipline Committee or to bring a matter to the attention of the Registrar, may within twenty days of the mailing of the written decision request the Board to review the decision.

Review of  
complaints

(3) Upon receipt of a request under subsection (2), the Board shall require the Registrar to transmit to the Board within fifteen days of the Board's request a record of the investigation and all such documents and things upon which the decision was based and the Board shall review the decision after giving the complainant an opportunity to state his or her complaint and the member or former member an opportunity to state his or her answer thereto personally, by an agent or in writing.

Idem

(4) Despite the *Statutory Powers Procedure Act*, a review by the Board shall be closed to the public, but if the member or former member whose conduct or actions are the subject-matter of the review requests otherwise by a notice delivered to the Board before the day fixed for the review, the Board shall conduct the review in public except where the Board is of the opinion that,

Closed to the  
public  
R.S.O. 1980,  
c. 484

(a) matters involving public security may be disclosed;  
or

(b) the possible disclosure of intimate financial or personal matters outweighs the desirability of holding the review in public.

(5) Subsections 29 (1), (2) and (3), which relate to proceedings of the Discipline Committee, apply with necessary modifications to a review by the Board under this section.

Publication  
prohibited

**26.** Where a complaint respecting a member or former member of the College has not been disposed of by the Complaints Committee within 120 days after the complaint is made, the Board upon application therefor may require the Complaints Committee to make an investigation and, where the investigation of the complaint has not been undertaken, completed and reported on to the Board by the Committee within 120 days after the Board's request, the Board shall

Investigation  
of complaint  
by Board



undertake such investigation and possesses all the powers of investigation of the Complaints Committee under this Act.

Powers of  
Board after  
review or  
investigation  
of complaint

**27.**—(1) The Board may, after review or investigation of a complaint under section 25 or 26,

- (a) confirm the decision, if any, made by the Complaints Committee;
- (b) make such recommendations to the Complaints Committee as the Board considers appropriate; or
- (c) require the Complaints Committee to take such action or proceeding as the Committee is authorized to undertake under this Act.

Board  
quorum

(2) Three members of the Board constitute a quorum for the purposes of an investigation or review of a complaint.

Decision and  
reasons

(3) The Board shall give its decision and reasons therefor in writing to the complainant and the member of the College complained against.

Discipline  
Committee

**28.**—(1) The Discipline Committee shall be composed of ten members of the Council of whom two shall be persons appointed to the Council by the Lieutenant Governor in Council.

Quorum and  
votes

(2) Three members of the Discipline Committee, one of whom is a person appointed to the Council by the Lieutenant Governor in Council, constitute a quorum, and all disciplinary decisions of the Committee require the vote of a majority of the members of the Committee present at the meeting.

Panels

(3) The Discipline Committee may sit in two or more panels simultaneously so long as a quorum of the Committee is present in each panel.

Assignment

(4) The person chairing the Discipline Committee shall assign the members of the Committee to its panels and may change an assignment at any time.

Expiry of  
member's  
term of  
office

(5) Where a proceeding is commenced before the Discipline Committee and the term of office on the Council or on the Committee of a person sitting for the hearing expires or is terminated, other than for cause, before the proceeding has been disposed of but after evidence has been heard, the person shall be deemed to remain a member of the Committee for the purpose of completing the proceeding in the same

manner as if the person's term of office had not expired or been terminated.

(6) Where the Discipline Committee commences a hearing and any member thereof becomes unable to continue to act, the remaining members may complete the hearing despite the absence of the member or members and may render a decision as effectually as if all members of the Committee were present throughout the hearing, despite the absence of a quorum of the Committee.

Disability of member

(7) The findings of fact of the Discipline Committee pursuant to a hearing shall be based exclusively on evidence admissible or matters that may be noticed under sections 15 and 16 of the *Statutory Powers Procedure Act*.

Findings of facts

R.S.O. 1980, c. 484

(8) A party to a hearing before the Discipline Committee shall be afforded an opportunity to examine before the hearing any written or documentary evidence that will be produced or any report the contents of which will be given in evidence at the hearing.

Examination of documentary evidence

(9) A party to a hearing before the Discipline Committee who intends to call an expert witness at the hearing shall, at least ten days before the commencement of the hearing, deliver to the other party a report, signed by the expert, setting out his or her name, address and qualifications and the substance of his or her proposed testimony.

Delivery of expert witness report

(10) An expert witness shall not testify at a hearing before the Discipline Committee unless subsection (9) has been complied with, except,

Exception for expert testimony

(a) with the permission of the Committee;

(b) with the consent of the other party; or

(c) to give reply evidence.

(11) Members of the Discipline Committee holding a hearing shall not have taken part before the hearing in any investigation or consideration of the subject-matter of the hearing other than as a member of the Council or the Executive Committee considering the referral of the matter to the Discipline Committee or at a previous hearing of the Committee, and shall not communicate directly or indirectly in relation to the subject-matter of the hearing with any person or with any party or any party's representative except upon notice to and opportunity for all parties to participate, but the Committee may seek legal advice from an adviser independent from the

Members holding hearing not to have taken part in investigation, etc.

parties and, in such case, the nature of the advice shall be made known to the parties in order that they may make submissions as to the law.

Recording of evidence

(12) The oral evidence taken before the Discipline Committee at a hearing shall be recorded and, if so required, copies of a transcript of the oral evidence shall be furnished upon the same terms as in the Supreme Court.

Only members at hearing to participate in decision

(13) No member of the Discipline Committee shall participate in a decision of the Committee following upon a hearing unless he or she was present throughout the hearing and heard the evidence and argument of the parties.

Release of documentary evidence

(14) Documents and things put in evidence at a hearing shall, upon the request of the person who produced them, be released to the person within a reasonable time after the matter in issue has been finally determined.

Practice and procedure

R.S.O. 1980, c. 484

(15) The Discipline Committee may determine its own practice and procedure in relation to hearings and may, subject to section 28 of the *Statutory Powers Procedure Act*, make rules governing such practice and procedure and the exercise of its powers in relation thereto that are not inconsistent with this Act and may prescribe such forms as are considered advisable.

Parties

(16) The College and the member or former member of the College whose conduct is being investigated are parties to the proceedings before the Discipline Committee.

Publication prohibited

**29.—**(1) No person shall,

- (a) take or attempt to take a photograph, motion picture, audio or video recording or other record capable of producing visual or aural representations by any means,
- (i) of any person at a hearing of the Discipline Committee,
- (ii) of any person entering or leaving a hearing of the Discipline Committee, or
- (iii) of any person in the building in which a hearing of the Discipline Committee is held, where there is reasonable ground for believing that the person is there for the purpose of attending the hearing; or

- (b) publish, broadcast, reproduce or otherwise disseminate a photograph, motion picture, audio or video recording or record taken in contravention of clause (a).

(2) Subsection (1) does not apply to,

Exception

- (a) a person unobtrusively making handwritten notes or sketches at a hearing;
- (b) a solicitor or party unobtrusively making an audio recording at a hearing that is used only as a substitute for handwritten notes for the purposes of the hearing;
- (c) a person taking a photograph, motion picture, audio or video recording or other record with the authorization of the Discipline Committee for any purpose of the hearing; or
- (d) a person taking a photograph, motion picture, audio or video recording or other record with the authorization of the Discipline Committee and the consent of the parties and of the witnesses to be recorded, for such educational or instructional purposes as the Committee approves.

(3) No person shall publish by any means the name of a member or former member of the College who is a party to a hearing by the Discipline Committee or any information which could reasonably serve to identify the member or former member,

Identification prohibited

- (a) unless the member or former member consents to such publication; or
- (b) until the Discipline Committee completes the hearing and makes a decision that is required by subsection 19 (1) to be entered in a register.

(4) Despite subsection (3), the Registrar may notify any person who, in the Registrar's opinion, is interested in a Discipline Committee hearing into the conduct of a member or former member of the College of the time and place of the hearing and, in so doing, may identify the member or former member.

Exception

**30.—(1)** The Council or the Executive Committee, by resolution, may direct the Discipline Committee to hold a hearing and determine any allegation of professional misconduct

Reference to Discipline Committee

or serious neglect on the part of a member or former member of the College specified in the resolution.

Duties of  
Discipline  
Committee

(2) The Discipline Committee shall,

- (a) when so directed by the Council, the Executive Committee or the Complaints Committee, hear and determine allegations of professional misconduct or serious neglect against a member or former member of the College;
- (b) hear and determine matters referred to it under section 37; and
- (c) perform such other duties as are assigned to it by the Council.

Professional  
misconduct

(3) A member or former member of the College shall be found guilty of professional misconduct by the Discipline Committee if,

- (a) the member or former member has been found guilty of an offence relevant to the suitability to practise veterinary medicine, upon proof of such finding;
- (b) the member's or former member's rights or privileges related to the practice of veterinary medicine under an Act of the Parliament of Canada or of the Legislature of Ontario, other than this Act, or the regulations thereunder, have been restricted or withdrawn, unless by the request of the member or former member, upon proof thereof;
- (c) there has been a finding of professional misconduct or serious neglect, or a like finding, against the member or former member by a veterinary authority in another jurisdiction, upon proof of such finding; or
- (d) the member or former member has been guilty in the opinion of the Committee of professional misconduct as defined in the regulations.

Serious  
neglect

(4) A member or former member of the College shall be found guilty of serious neglect by the Discipline Committee if the member or former member has displayed in his or her professional care of an animal a lack of knowledge, skill or judgment or disregard for the welfare of the animal of a nature or to an extent that demonstrates the member or for-



mer member is unfit to engage in the practice of veterinary medicine or is fit to engage in the practice of veterinary medicine only subject to the conditions and limitations imposed by the Discipline Committee.

(5) Where the Discipline Committee finds a member or former member of the College guilty of professional misconduct or serious neglect, it may by order, Powers of  
Discipline  
Committee

- (a) revoke the licence of the member;
- (b) withdraw recognition of the specialist status of the member;
- (c) suspend the licence of the member or suspend recognition of the specialist status of the member, or both, for a stated period or pending the demonstration of such facts as are specified by the Committee;
- (d) impose such conditions and limitations upon the licence of the member for such period of time as is specified by the Committee or pending the demonstration of such facts as are specified by the Committee;
- (e) impose such fine as the Committee considers appropriate, to a maximum of \$5,000, to be paid by the member or former member to the Treasurer of Ontario for payment into the Consolidated Revenue Fund;
- (f) reprimand the member or former member;
- (g) direct that the imposition of a penalty be suspended or postponed for such period and upon such terms as the Committee designates,

or any combination thereof.

(6) Where the Discipline Committee is of the opinion that the commencement of the proceedings was unwarranted, the Committee shall order that the College reimburse the member or former member of the College for his or her costs or such portion thereof as the Committee fixes. Costs

(7) Where the Discipline Committee imposes a fine or reprimands a member or former member, the Committee may direct that the fact and amount of the fine or the fact of the reprimand not be entered in a register required to be kept under subsection 19 (1). Register  
entries

Publication  
and service  
of decision of  
Discipline  
Committee

**31.**—(1) Where the Discipline Committee finds a member or former member of the College guilty of professional misconduct or serious neglect,

- (a) the Registrar shall publish the finding, with or without the reasons therefor, in a publication of the College; and
- (b) the Registrar shall serve a copy of the decision upon the person, if any, complaining in respect of the conduct or actions of the member or former member.

When name  
is published

(2) If the finding of the Discipline Committee is required by subsection 19 (1) to be recorded in a register, the Registrar shall include the name of the member or former member in the publication required under clause (1) (a).

When name  
is not  
published

(3) If the Discipline Committee directs that no entry be made in a register, the Registrar shall not include the name of the member or former member in the publication required under clause (1) (a).

Stay of  
decision on  
appeal,  
serious  
neglect

**32.**—(1) Where the Discipline Committee revokes or suspends a licence, withdraws or suspends recognition of specialist status or imposes conditions or limitations upon a licence on the ground of serious neglect, the decision takes effect immediately even if an appeal is taken from the decision, unless the court to which the appeal is taken otherwise orders.

Stay of  
decision on  
appeal,  
professional  
misconduct

(2) Where the Discipline Committee revokes or suspends a licence, withdraws or suspends recognition of specialist status or imposes conditions or limitations upon a licence on the ground of professional misconduct, the order does not take effect until the time for appeal from the order has expired without an appeal being taken or, if taken, the appeal has been disposed of or abandoned.

Definition

**33.**—(1) In this section, “board of inquiry” means a board of inquiry appointed by the Executive Committee under subsection (2).

Board of  
inquiry

(2) Where the Registrar receives information leading the Registrar to believe that a member of the College may be impaired, the Registrar shall make such inquiry as he or she considers appropriate and report to the Executive Committee which may, upon notice to the member of the College, appoint a board of inquiry composed of at least two members of the College and one member of the Council appointed thereto by the Lieutenant Governor in Council.

(3) The board of inquiry shall make such inquiries as it considers appropriate and may require the member of the College to submit to physical and mental examinations by such qualified persons as the board of inquiry designates, but not to more than one examination in each area of medical specialty and if the member of the College refuses or fails to submit to such examinations, the board of inquiry may order that the member's licence be suspended until he or she complies. Examination

(4) The board of inquiry shall report its findings to the Executive Committee and deliver a copy thereof and a copy of any report obtained under subsection (3) to the member of the College about whom the report is made and if, in the opinion of the Executive Committee, the evidence so warrants, the Executive Committee shall refer the matter to the Registration Committee to hold a hearing and may suspend the member's licence until the determination of whether or not the member is impaired becomes final. Hearing by Registration Committee

(5) The College, the member of the College being investigated and any other person specified by the Registration Committee are parties to a hearing before the Registration Committee under this section. Parties

(6) A legally qualified medical practitioner is not compellable to produce at the hearing his or her case histories, notes or any other records constituting medical evidence but, when required to give evidence, shall prepare a report containing the medical facts, findings, conclusions and treatment. Medical evidence

(7) The report required under subsection (6) is receivable in evidence without proof of its making or of the signature of the legally qualified medical practitioner making the report but a party who is not tendering the report as evidence has the right to summon and cross-examine the medical practitioner on the contents of the report. Idem

(8) The Registration Committee shall, after the hearing, Powers of Registration Committee

(a) make a finding as to whether or not the member of the College is impaired; and

(b) where the member of the College is found to be impaired, by order,

(i) revoke the member's licence,

(ii) suspend the member's licence either indefinitely or pending the demonstration of such facts as the Committee specifies, or

- (iii) impose such conditions and limitations upon the member's licence as the Committee considers appropriate.

Procedures

(9) Subsections 28 (5) to (15) and 29 (1), (2) and (3), which relate to proceedings of the Discipline Committee, apply with necessary modifications to proceedings of the Registration Committee under this section.

Closed to the public  
R.S.O. 1980,  
c. 484

(10) Despite the *Statutory Powers Procedure Act*, a hearing by the Registration Committee under this section shall be closed to the public but, if the member of the College who is the subject-matter of the hearing requests otherwise by a notice delivered to the Registration Committee before the day fixed for the hearing, the Registration Committee shall conduct the hearing in public except where,

- (a) matters involving public security may be disclosed; or
- (b) the possible disclosure of intimate financial or personal matters outweighs the desirability of holding the hearing in public.

Continuing jurisdiction over former member

(11) Subsections (1) to (10) apply with necessary modifications to an inquiry or hearing into whether or not a former member of the College was impaired when he or she was a member of the College, and for such purposes the board of inquiry or Registration Committee, as the case may be, may provide that the revocation or suspension of a licence or the imposition of conditions or limitations upon a licence take effect at the same time as or immediately after an existing revocation or suspension.

Stay of decision on appeal

**34.** Where the Registration Committee revokes, suspends or imposes conditions or limitations upon the licence of a member of the College on the ground that the member is impaired, the decision takes effect immediately even if an appeal is taken from the decision, unless the court to which the appeal is taken otherwise orders.

Appeal to court

**35.—(1)** A party to,

- (a) a proceeding before the Discipline Committee under section 30;
- (b) a proceeding before the Registration Committee under section 33;

- (c) a proceeding before the Accreditation Committee under section 22;
- (d) a hearing by the Board in respect of a proposal by the Registration Committee related to the issuance of a licence or the imposition of conditions or limitations on a licence; or
- (e) a hearing by the Board in respect of a proposal by the Accreditation Committee related to the issuance or renewal of a certificate of accreditation or the imposition of conditions or limitations on a certificate of accreditation,

may appeal to the Divisional Court from the decision or order of the committee or the Board.

(2) Upon the request of a party desiring to appeal to the Divisional Court and upon payment of a reasonable administrative fee therefor, the Registrar or the Executive Secretary of the Board, as the case requires, shall furnish the party with a certified copy of the record of the proceedings.

Certified  
copy of  
record

(3) An appeal under this section may be made on questions of law or fact or both and the court may affirm or may rescind the decision of the Board or the committee appealed from and may exercise all powers of the Board or the committee appealed from to take any action which the Board or the committee appealed from may take and as the court considers proper, and for such purposes the court may substitute its opinion for that of the Board or the committee appealed from or the court may refer the matter back to the Board or the committee appealed from for rehearing, in whole or in part, in accordance with such directions as the court considers proper.

Powers of  
court on  
appeal

**36.—**(1) Where the Registrar believes on reasonable ground that a member or former member of the College has committed an act of professional misconduct or serious neglect or that there is cause to refuse to issue or renew or to suspend or revoke a certificate of accreditation, the Registrar, with the approval of the Executive Committee, by order may appoint one or more persons to investigate whether such act has occurred or whether there is such cause, and the person or persons appointed shall report the results of the investigation to the Registrar.

Registrar's  
investigation

(2) For purposes relevant to the subject-matter of an investigation under this section, a person appointed to make an investigation may inquire into and examine the practice of the member or former member in respect of whom the investiga-

Powers of  
investigator



tion is being made and may, upon production of his or her appointment, enter at any reasonable time the business premises of the member or former member, make reasonable inquiries of any person and examine documents and things relevant to the subject-matter of the investigation.

Co-operation  
with  
investigator

(3) Every member and former member of the College shall co-operate fully with a person appointed to make an investigation into his or her practice.

Order by  
justice of the  
peace

(4) Where a justice of the peace is satisfied on evidence upon oath that the Registrar had grounds for appointing and by order has appointed one or more persons to make an investigation, the justice may, whether or not an investigation has been made or attempted under subsection (2), issue a warrant authorizing the person or persons making the investigation and named in the warrant, to enter any premises in which the member or former member of the College in respect of whom the investigation is being made has engaged in the practice of veterinary medicine or maintained records, to search for any documents or things relevant to the subject-matter of the investigation.

Authority to  
use force

(5) A warrant issued under subsection (4) authorizes the person or persons named in the warrant to carry out the warrant by force if necessary and together with such police officers as are called upon for assistance.

Execution of  
warrant

(6) A warrant issued under subsection (4) shall specify the hours and days during which it may be executed.

Expiry of  
warrant

(7) A warrant issued under subsection (4) shall state the date on which it expires, which shall be a date not later than fifteen days after the warrant is issued.

Application  
without  
notice

(8) A justice of the peace may receive and consider an application for a warrant under subsection (4) without notice to and in the absence of the member or former member of the College whose practice is being investigated.

Removal of  
documents  
and things

(9) Any person making an investigation under this section may, upon giving a receipt therefor, remove any documents or things examined under this section relating to the member or former member whose practice is being investigated and to the subject-matter of the investigation for the purpose of making copies or extracts and shall promptly return such documents or things to the member or former member whose practice is being investigated.

(10) Any copy or extract made as provided in subsection (9) and certified to be a true copy or extract by the person who made it is admissible in evidence to the same extent as, and has the same evidentiary value as, the document or thing of which it is a copy or extract.

Admissibility  
of copies

(11) The Registrar shall report the results of the investigation to the Council or such committee as the Registrar considers appropriate.

Report of  
Registrar

**37.—**(1) A person whose licence has been revoked for cause under this Act, or whose registration has been cancelled for cause under a predecessor of this Act, may apply in writing to the Registrar for the issuance of a licence, but the application shall not be made sooner than two years after the revocation or cancellation or one year after any prior application for issuance of the licence.

Application  
for licence  
after  
revocation

(2) A person whose licence has been suspended for cause under this Act, or whose registration has been suspended for cause under a predecessor of this Act, for more than one year or for other than a specific period, may apply in writing to the Registrar for the removal of the suspension, but the application shall not be made sooner than one year after the commencement of the suspension or one year after any prior application for the removal of the suspension.

Removal of  
suspension

(3) A person to whose licence terms, conditions or limitations have been attached for cause under this Act, or under a predecessor of this Act, may apply in writing to the Registrar for removal or alteration of the terms, conditions or limitations, but the application shall not be made sooner than one year after the commencement of the terms, conditions or limitations or one year after any prior application for removal or alteration of the terms, conditions or limitations.

Variation of  
licence  
restrictions

(4) Subsection (3) does not apply to a person whose licence is the subject of conditions or limitations imposed as a result of a proposal or decision of the Registration Committee under clause 14 (6) (c).

Exemptions

(5) The Registrar shall refer an application under subsection (1), (2) or (3) to the committee that ordered the revocation, suspension, condition or limitation, as the case may be, and the committee shall hold a hearing respecting the application.

Referral to  
committee

(6) Where the council of the Ontario Veterinary Association ordered the cancellation, suspension, term or condition under a predecessor of this Act, the Registrar shall refer the

Idem, orders  
under  
predecessor  
Act

application under subsection (1), (2) or (3) to the committee which, under this Act, would have jurisdiction over the subject-matter that resulted in the cancellation, suspension, term or condition and the committee shall hold a hearing respecting the application.

Hearing by  
Registration  
Committee

(7) Subsections 28 (5) to (15) and 29 (1), (2) and (3), which relate to hearings by the Discipline Committee, and subsection 33 (10), which relates to hearings by the Registration Committee into whether or not a member is impaired, apply with necessary modifications to proceedings of the Registration Committee under this section.

Hearing by  
Discipline  
Committee

(8) The provisions of this Act which relate to proceedings of the Discipline Committee apply to proceedings of the Discipline Committee under this section.

Parties

(9) The applicant and the College are parties to a hearing under subsection (5) or (6).

Powers of  
committee

(10) The committee shall, after the hearing under subsection (5) or (6), report its decision and reasons to the parties and direct the Registrar,

- (a) to issue the licence;
- (b) to refuse to issue the licence;
- (c) to issue the licence subject to the conditions and limitations the committee specifies;
- (d) to remove the suspension of the licence;
- (e) to refuse to remove the suspension of the licence;
- (f) to remove or alter any of the terms, conditions or limitations attached to the licence; or
- (g) to refuse to remove or alter any of the terms, conditions or limitations attached to the licence.

Confiden-  
tiality

**38.—**(1) Every person engaged in the administration of this Act, including any person making an investigation under section 36, shall preserve secrecy with respect to all matters that come to his or her knowledge in the course of his or her duties, employment, examination, review or investigation and shall not communicate any such matters to any other person except,

- (a) as may be permitted by the regulations or required in connection with the administration of this Act and the regulations and by-laws, or any proceeding under this Act or the regulations;
- (b) to his or her counsel; or
- (c) with the consent of the person to whom the information relates.

(2) No person to whom subsection (1) applies shall be required to give testimony or to produce any document or thing in any action or proceeding with regard to information obtained in the course of his or her duties, employment, examination, review or investigation except in a proceeding under this Act or the regulations. Testimony in civil action

(3) For the purposes of subsections (1) and (2), the Board, each member of the Board and each member of the staff of the Board shall be deemed to be a person engaged in the administration of this Act. Board

**39.**—(1) Where it appears to the College that any person does not comply with any provision of this Act or the regulations, despite the imposition of any penalty in respect of such non-compliance and in addition to any other rights it may have, the College may apply to a judge of the High Court for an order directing the person to comply with the provision, and upon the application the judge may make the order or such other order as the judge thinks fit. Order directing compliance

(2) An appeal lies to the Divisional Court from an order made under subsection (1). Appeal

**40.**—(1) Every person who contravenes section 11 is guilty of an offence and on conviction is liable for the first offence to a fine of not more than \$15,000 and for each subsequent offence to a fine of not more than \$30,000. Penalties

(2) Every person who is not a holder of a licence and who, Idem. use of titles

- (a) uses the title “veterinarian” or “veterinary surgeon” or an abbreviation or variation thereof as an occupational or business designation; or
- (b) uses a term, title or description that will lead to the belief that the person may engage in the practice of veterinary medicine,



is guilty of an offence and on conviction is liable for the first offence to a fine of not more than \$5,000 and for each subsequent offence to a fine of not more than \$15,000.

Idem,  
publication

(3) Every person who contravenes subsection 29 (1) or (3) is guilty of an offence and on conviction is liable to a fine of not more than \$10,000 and for each subsequent offence to a fine of not more than \$20,000.

Corporation

(4) Where a corporation is convicted of an offence under subsection (1), (2) or (3), the maximum fine that may be imposed is \$25,000 on a first conviction and \$50,000 on each subsequent conviction and not as provided in subsection (1), (2) or (3).

Offence,  
director,  
officer, etc.,  
of  
corporation

(5) Where a corporation is convicted of an offence under subsection (1), (2) or (3),

(a) each director of the corporation; and

(b) each officer, employee or agent of the corporation who was in whole or in part responsible for the conduct of that part of the business of the corporation that gave rise to the offence,

is guilty of an offence unless he or she proves, on the balance of probabilities, that he or she took all reasonable care to prevent the commission of the offence.

Idem,  
penalty

(6) Every person convicted of an offence under subsection (5) is liable on conviction to a fine of not more than \$15,000 on a first conviction and not more than \$30,000 on each subsequent conviction.

Limitation

(7) Proceedings shall not be commenced in respect of an offence under subsection (1), (2), (3) or (5) after two years after the date on which the offence was, or is alleged to have been, committed.

Falsification  
of documents

**41.—(1)** Any person who makes or causes to be made a wilful falsification in a matter relating to a register or directory or issues a false licence, certificate of accreditation or document with respect to the issuance of a licence or certificate of accreditation is guilty of an offence and on conviction is liable to a fine of not more than \$5,000.

Offences for  
false  
representation

(2) Every person who wilfully procures or attempts to procure the issuance of a licence or a certificate of accreditation under this Act by knowingly making a false representation or declaration or by making a fraudulent representation or declara-



ration, either orally or in writing, is guilty of an offence and on conviction is liable to a fine of not more than \$5,000.

(3) Proceedings to obtain a conviction for an offence under subsection (1) or (2) shall not be commenced after the expiration of one year after the date on which the offence was, or is alleged to have been, committed. Limitation period

**42.** Where licensing or acting under and in accordance with a certificate of accreditation under this Act is required to permit the lawful doing of an act or thing, if in any prosecution it is proven that the defendant has done the act or thing, the burden of proving that he or she was so licensed or that he or she acted under and in accordance with a certificate of accreditation under this Act rests upon the defendant. Onus of proof respecting licensing

**43.—(1)** A notice or document under this Act or the regulations is sufficiently given, served or delivered if delivered personally or by mail. Service of notice or document

(2) Where a notice or document under this Act or the regulations is sent to a person by mail addressed to the person at the last address of the person in the records of the College, there is a rebuttable presumption that the notice or document is delivered to the person on the fifth day after the day of mailing. Idem

**44.** Any statement containing information from the records required to be kept by the Registrar under this Act and purporting to be certified by the Registrar under the seal of the College is admissible in evidence in all courts and tribunals as proof in the absence of evidence to the contrary of the facts stated therein without proof of the appointment or signature of the Registrar and without proof of the seal. Registrar's certificate as evidence

**45.—(1)** No action or other proceeding for damages shall be instituted against the Board, the College, the Council, a committee of the College or a member of the Board, the Council or a committee of the College, or an officer, employee, agent or appointee of the Board or of the College for any act done in good faith in the performance or intended performance of a duty or in the exercise or the intended exercise of a power under this Act, a regulation or a by-law, or for any neglect or default in the performance or exercise in good faith of such duty or power. Immunity

(2) Every member of the Council or a committee of the College and every officer and employee of the College, and their heirs, executors and administrators, and estate and effects, respectively, shall from time to time and at all times, Councillor indemnified in suits respecting duties of office

be indemnified and saved harmless out of the funds of the College, from and against,

- (a) all costs, charges and expenses whatsoever that he or she sustains or incurs in or about any action or proceeding brought or commenced against him or her in respect of any act, deed, matter or thing whatsoever, made, done or permitted by him or her, in or about the execution of the duties of his or her office; and
- (b) all other costs, charges and expenses that he or she sustains or incurs in or about or in relation to the affairs thereof,

except such costs, charges or expenses as are occasioned by his or her own wilful neglect or default.

Limitation of  
action

**46.** Proceedings shall not be commenced against a member of the College for damages arising from the provision of a service that is within the practice of veterinary medicine after one year from the date when the person commencing the action knew or ought to have known the fact or facts upon which the allegations are based.

Application  
of  
R.S.O. 1980,  
c. 95

**47.—(1)** The *Corporations Act* does not apply in respect of the College except for the following sections of that Act which apply with necessary modifications in respect of the College:

- 1. Section 81 (liability for wages).
- 2. Section 94 (auditors) and, for the purpose, the Minister shall be deemed to be the Minister referred to in the section.
- 3. Subsection 95 (1) (auditor's qualifications) and, for the purpose, the subsection shall be deemed not to include,
  - i. the exception as provided in subsection 95 (2), and
  - ii. the reference to an affiliated company.
- 4. Section 96 (auditor's functions).
- 5. Subsection 97 (1), exclusive of clause 97 (1) (b), (auditor's report) and, for the purpose, the College shall be deemed to be a private company.

6. Subsection 97 (2) (designation of statements).
7. Subsection 97 (3) (auditor's report).
8. Section 122 (liability of members).
9. Section 276 (holding of land) and, for the purpose, the Minister shall be deemed to be the Minister referred to in the section.
10. Section 280 (making contracts).
11. Section 281 (power of attorney).
12. Section 282 (authentication of documents) except in respect of information from the records required to be kept by the Registrar.
13. Section 292 (validity of acts of directors).
14. Section 293 (annual meetings).
15. Section 297 (directions by a court as to holding a meeting).
16. Section 299 (minutes of meetings).
17. Section 302 (books of account).
18. Section 303 (untrue entries) and, for the purpose, the section shall be deemed not to refer to section 41 of that Act.
19. Section 304 (place of keeping and inspection of records) and, for the purpose,
  - i. the section shall be deemed not to refer to sections 41 (register of transfers) and 43 (registers of transfers) of that Act, and
  - ii. the Minister shall be deemed to be the Minister referred to in the section.
20. Section 305 (inspection of records) and, for the purpose, the section shall be deemed not to refer to creditors and to refer to section 41 of that Act.
21. Section 310 (investigations and audits).

22. Section 329 (removal of proceedings into the Supreme Court).
23. Section 330 (appeals).
24. Section 331 (untrue statements) and, for the purpose,
  - i. the section shall be deemed not to refer to regulations made under that Act, and
  - ii. the Minister shall be deemed to be the Minister referred to in the section and the Deputy Minister of the Ministry presided over by the Minister under this Act shall be deemed to be the Deputy Minister referred to in the section.
25. Section 333 (orders by court) and, for the purpose, the section shall be deemed not to refer to creditors.

## Interpretation

(2) For the purposes of subsection (1), a member of the College shall be deemed to be a shareholder and a member of the Council shall be deemed to be a director.

Non-application of  
R.S.O. 1980,  
c. 96

(3) The *Corporations Information Act* does not apply in respect of the College.

## Repeal

**48.**—(1) The *Veterinarians Act*, being chapter 522 of the Revised Statutes of Ontario, 1980, is repealed.

## Idem

(2) Any reference in any Act or regulation to a veterinarian as a member of the Ontario Veterinary Association under the *Veterinarians Act* shall be deemed to be a reference to a member of the College under this Act.

Commence-  
ment

**49.** This Act comes into force on a day to be named by proclamation of the Lieutenant Governor.

## Short title

**50.** The short title of this Act is the *Veterinarians Act, 1989*.

600N  
KB  
656

Government  
Publication

**Bill 40**

**Government Bill**

2ND SESSION, 34TH LEGISLATURE, ONTARIO

38 ELIZABETH II, 1989

# Bill 40

## An Act to repeal the Brucellosis Act

The Hon. J. Riddell  
*Minister of Agriculture and Food*



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*1st Reading*      June 29th, 1989  
*2nd Reading*  
*3rd Reading*  
*Royal Assent*

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## EXPLANATORY NOTE

The purpose of the Bill is to repeal the *Brucellosis Act*. Any agreement made under subsection 3 (2) of the Act between the Minister and a veterinarian is void. In section 3, the Minister is authorized to transfer records and information to the Department of Agriculture of the Government of Canada.

**Bill 40****1989****An Act to repeal the Brucellosis Act**

HER MAJESTY, by and with the advice and consent of the Legislative Assembly of the Province of Ontario, enacts as follows:

- 1.** The *Brucellosis Act*, being chapter 50 of the Revised Statutes of Ontario, 1980, is repealed. Repeal
- 2.** All agreements made between the Minister of Agriculture and Food and veterinarians under subsection 3 (2) of the *Brucellosis Act* are void. Agreements void
- 3.** The Minister of Agriculture and Food may transfer to the Department of Agriculture (Canada) records and information acquired in the administration of the *Brucellosis Act*. Disposal of records
- 4.** This Act comes into force on the day it receives Royal Assent. Commencement
- 5.** The short title of this Act is the *Brucellosis Repeal Act*, 1989. Short title



# Bill 40

(Chapter 61  
*Statutes of Ontario, 1989*)

## An Act to repeal the Brucellosis Act

The Hon. D. Ramsay  
*Minister of Agriculture and Food*



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<i>1st Reading</i>	June 29th, 1989
<i>2nd Reading</i>	November 22nd, 1989
<i>3rd Reading</i>	November 29th, 1989
<i>Royal Assent</i>	December 6th, 1989

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**Bill 40****1989****An Act to repeal the Brucellosis Act**

HER MAJESTY, by and with the advice and consent of the Legislative Assembly of the Province of Ontario, enacts as follows:

- 1.** The *Brucellosis Act*, being chapter 50 of the Revised Statutes of Ontario, 1980, is repealed. Repeal
- 2.** All agreements made between the Minister of Agriculture and Food and veterinarians under subsection 3 (2) of the *Brucellosis Act* are void. Agreements  
void
- 3.** The Minister of Agriculture and Food may transfer to the Department of Agriculture (Canada) records and information acquired in the administration of the *Brucellosis Act*. Disposal of  
records
- 4.** This Act comes into force on the day it receives Royal Assent. Commence-  
ment
- 5.** The short title of this Act is the *Brucellosis Repeal Act*, 1989. Short title



# Bill 41

## An Act to revise the Teachers' Superannuation Act, 1983 and to make related amendments to the Teaching Profession Act

The Hon. C. Ward  
*Minister of Education*



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*1st Reading*      June 29th, 1989  
*2nd Reading*  
*3rd Reading*  
*Royal Assent*

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## EXPLANATORY NOTES

The Bill will continue the existing pension plan established under the *Teachers' Superannuation Act, 1983* (which contains the basic pension plan) and the *Superannuation Adjustment Benefits Act* (which requires inflation adjustments for benefits payable under the basic plan).

Changes will be made respecting who is eligible to become a member of the plan, the level of contributions required under the plan and certain rules governing pension transfers and the purchase of credit under the plan. Certain provisions of the pension plan concerning entitlement to benefits and the administration of the plan will be changed to meet the requirements of the *Pension Benefits Act, 1987*. Additional technical changes are made with respect to the administration of the plan.

Three alternative mechanisms for amending the pension plan will be provided. Initially, the Lieutenant Governor in Council will be able to amend the plan by order. The Bill will permit the government to enter into an agreement with the members to establish joint control or member control over the plan. Amendments to the pension plan will then be made according to the terms of the agreement. Ownership of surplus and responsibility for deficits that may arise under the pension plan will be concomitant with control over the plan. Details of each agreement will be set out in a regulation.

An Ontario Teachers' Pension Plan Board will be created to administer the pension plan and pension fund. If the government enters into an agreement with the members concerning control of the pension plan, the structure, powers and duties of the Board will be altered in accordance with the agreement.

Custody of the pension fund will be transferred from the Treasurer to the Board. The Treasurer will be responsible for paying any deficit that may exist when the pension fund is transferred to the Board.

Related amendments to the *Teaching Profession Act* will authorize the Ontario Teachers Federation to enter into agreements with the government concerning the pension plan and to represent the active members of the pension plan in governing the plan.

The Bill is structured as an Act with two Schedules. The Act contains the particulars of the continuation of the pension plan (sections 2 to 5), the establishment of the Board (sections 6 to 8), the amending mechanisms (sections 9 to 12), the transfer of the pension fund from the Treasurer to the Board (section 13), transitional provisions (sections 14 to 16) and the amendments to the *Teaching Profession Act* (section 17).

Schedule 1 contains the details of the pension plan.

Schedule 2 requires a valuation of the pension fund as of the date it is transferred from the Treasurer to the Board. It also provides for special monthly payments by the Treasurer to liquidate the unfunded liability of the plan as it exists when custody of the fund is transferred.

### CHANGES TO THE PENSION PLAN:

The following are the key changes in the terms of the pension plan:

1. *Membership.* Eligibility criteria for active membership in the plan are specified. (*Sections 2 to 9 of Schedule 1*) Full-time and contractual part-time employees who are qualified as teachers are required to become members, while occasional employees may elect to join the pension plan.
2. *Contributions.* The amount of required contributions is increased. (*Sections 16, 19, 23 and 24 of Schedule 1*)

3. *Benefits.* Changes required by the *Pension Benefits Act, 1987* include the following:

A person's entitlement to a pension for his or her post-1986 employment vests and his or her contributions are locked in after two years of continuous membership in the plan. (*Sections 28 to 33 of Schedule 1*)

If a member entitled to a pension dies before beginning to receive it, the member's spouse, beneficiary or estate is entitled to a benefit based on the member's post-1986 employment. (*Sections 57 to 62 of Schedule 1*)

The amount of a spouse's survivor pension is increased from 50 per cent to 60 per cent of the member's pension, with a corresponding reduction in the amount of the member's pension. The member and spouse can waive the increase. (*Section 64 of Schedule 1*)

A pensioner who marries after retirement may elect to provide a survivor pension for a spouse, with a corresponding reduction in the amount of the member's pension. (*Sections 66 to 68 of Schedule 1*). (This change is not required by the *Pension Benefits Act, 1987*).

4. *Pension transfer and purchase of credit.* A person who ceases to be an active member of the pension plan may transfer his or her pension benefit for post-1986 employment to another pension plan or locked-in retirement savings arrangement. (*Section 34 of Schedule 1*)

The rules governing purchases of credited service are set out: for a leave of absence or a break in service (*section 90 of Schedule 1*); for an absence for a religious holiday (*section 91*); for a repurchase by a former member who rejoins the plan (*section 92*); for approved service outside Ontario (*section 93*); for service in specified circumstances at a designated private school (*section 94*); and, for other employment (*sections 95 to 98*).

Beginning in 1992 for most purchases of credited service, the member will be required to pay the actuarial cost of the pension improvement being purchased. This includes purchases made under a reciprocal agreement with another pension plan. (*Sections 90, 92, 93, 97 to 100 of Schedule 1*)





**Bill 41**

**1989**

**An Act to revise the  
Teachers' Superannuation Act, 1983 and to make  
related amendments to the Teaching Profession Act**

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**ONTARIO TEACHERS' PENSION PLAN**

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HER MAJESTY, by and with the advice and consent of the Legislative Assembly of the Province of Ontario, enacts as follows:

## 1. In this Act,

## Definitions

“active plan member”, of the pension plan, means a person who is making the contributions required of an active member of the plan;

“Board” means the Ontario Teachers’ Pension Plan Board;

“Minister” means the Minister of Education;

“pension fund” means the pension fund maintained to provide benefits in respect of the Ontario Teachers’ Pension Plan;

“pension plan” means the Ontario Teachers’ Pension Plan.

Pension plan continued

1983, c. 84

R.S.O. 1980, c. 490

**2.—**(1) A pension plan to be known as the Ontario Teachers’ Pension Plan continues the pension plan set out in the *Teachers’ Superannuation Act, 1983* and the regulations thereunder, including the benefits provided under the *Superannuation Adjustment Benefits Act* in relation to the pensions provided under the *Teachers’ Superannuation Act, 1983*.

Defined benefits plan  
1987, c. 35

(2) The pension plan shall be a defined benefit plan within the meaning of the *Pension Benefits Act, 1987*.

Plan documents

(3) The terms of the pension plan are as set out in Schedule 1 to this Act and in such other governing documents as may be created under this Act or that Schedule.

Administrator  
1987, c. 35  
R.S.C. 1952, c. 148

**3.** The Board shall administer the pension plan and manage the pension fund in accordance with this Act, the *Pension Benefits Act, 1987* and the *Income Tax Act (Canada)*.

Pension fund  
1983, c. 84

**4.** The Teachers’ Superannuation Fund established under the *Teachers’ Superannuation Act, 1983* is continued as the pension fund maintained to provide benefits in respect of the pension plan.

Contributions by the Crown

**5.—**(1) Unless otherwise required by this section, contributions under the pension plan payable by the Minister shall be paid out of moneys appropriated therefor by the Legislature.

Payments re transitional valuation

(2) The Treasurer shall make the payments required under Schedule 2.

Deficiency

(3) If in a year the amount of cash and assets capable of sale in the pension fund is insufficient to meet the payments out of the fund in the year after the sale of the assets capable of sale, the Treasurer shall pay from the Consolidated Revenue Fund an amount sufficient to make up the deficiency.

Limitation

(4) Subsection (3) ceases to apply if an agreement mentioned in subsection 11 (1) is in force.

Board established

**6.—**(1) The Teachers’ Superannuation Commission is continued under the name of the Ontario Teachers’ Pension Plan Board and is constituted as a corporation without share capital.

Application of  
R.S.O. 1980, c. 95

(2) The *Corporations Act* does not apply with respect to the Board.



**7.** The composition of the Board shall be as is prescribed by regulation. Composition of the Board

**8.** The powers and duties of the Board shall be those prescribed by regulation. Powers, etc., of the Board

**9.—(1)** The Lieutenant Governor in Council by order may amend the pension plan as set out in Schedule 1 and, without restricting the generality of the foregoing, may, Amendment of the plan

- (a) determine the methods or assumptions to be used to calculate any pension benefit provided under the plan;
- (b) rescind the plan and replace it with another pension plan;
- (c) extend, modify or restrict the conditions upon which persons may become members of the plan;
- (d) increase or prospectively reduce, eliminate or modify any pension benefit set out in the plan or the rate or amount of contribution to be made under the plan;
- (e) regulate the administration of the plan;
- (f) exercise with respect to any plan established under this section the powers conferred by this section.

**(2)** To the extent that an amendment to the pension plan conflicts with the *Pension Benefits Act, 1987* in a matter in which the conflict is not authorized by this Act or Schedule 1, the amendment is void. Idem 1987, c. 35

**(3)** The *Regulations Act* does not apply with respect to an order amending the pension plan. Application of R.S.O. 1980, c. 446

**10.—(1)** The Lieutenant Governor in Council may enter into an agreement with the representatives of a majority of active plan members which provides for the following matters: Agreement for joint responsibility

- 1. The joint management of the plan by the Crown and representatives of the active plan members.
- 2. The sharing of entitlement to surplus under the plan and of liability for deficiencies in the pension fund by the Crown, the employers who contribute under the plan and the active plan members.

3. Prior consultation between the Crown and representatives of the active plan members concerning any change in benefits under the plan or in the rate or amount of contributions to the pension fund by the Crown or by active plan members.
4. Mediation procedures to be used if, after consultation, the Crown and the representatives are unable to agree upon a change in benefits or in the rate or amount of contributions.
5. The terms upon which the Lieutenant Governor in Council shall exercise the powers described in section 9.
6. Such other matters as are prescribed.

Idem

(2) The Lieutenant Governor in Council shall prescribe the composition of the Board and the powers and duties of the Board in accordance with the terms of any such agreement.

Idem

(3) If the Lieutenant Governor in Council enters into an agreement as described in subsection (1), the agreement may provide that the Lieutenant Governor in Council shall exercise the powers set out in section 9 of this Act in accordance with the terms of the agreement.

Agreement  
for member  
responsibility

**11.—**(1) The Lieutenant Governor in Council may enter into an agreement with the representatives of a majority of active plan members that provides for the following matters:

1. That the entitlement to surpluses in the pension fund and the liability for deficiencies in the fund is permanently assumed by the active plan members.
2. That the liability of the Crown to contribute under the pension plan is limited to a specified amount or to a specified percentage of member contributions under the plan.
3. The terms upon which the Lieutenant Governor in Council shall exercise the powers described in section 9.
4. Such other matters as are prescribed.

Idem

(2) The Lieutenant Governor in Council shall prescribe the composition of the Board and the powers and duties of the Board in accordance with the terms of any such agreement.

(3) If the Lieutenant Governor in Council enters into an agreement as described in subsection (1), the agreement may provide that the Lieutenant Governor in Council shall exercise the powers set out in section 9 of this Act in accordance with the terms of the agreement. Idem

**12.** The Lieutenant Governor in Council may make regulations, Regulations

- (a) governing the composition, powers and duties of the Board;
- (b) prescribing matters to be addressed and terms to be included in an agreement referred to in subsection 10 (1) or 11 (1);
- (c) prescribing, for the purpose of subsection 4 (2) of Schedule 2, the applications to be made of an actuarial gain.

**13.—(1)** In this section,

Transfer of  
pension funds

“Superannuation Adjustment Fund account” means the account maintained in the Superannuation Adjustment Fund under the *Superannuation Adjustment Benefits Act* in respect of the Teachers’ Superannuation Fund; R.S.O. 1980,  
c. 490

“Teachers’ Superannuation Fund” means the Teachers’ Superannuation Fund under the *Teachers’ Superannuation Act, 1983*. 1983, c. 84

(2) As of the 31st day of December, 1989, the Treasurer shall pay to the Superannuation Adjustment Fund interest at the rate and upon the terms determined by the Lieutenant Governor in Council on the cash balances that from time to time stood to the credit of the Superannuation Adjustment Fund account during the period from the 1st day of April, 1989 to the 31st day of December, 1989. Payment of  
accrued  
interest

(3) Interest payable by the Treasurer on assets in the Superannuation Adjustment Fund account held on the 1st day of April, 1989 shall be accrued to the 31st day of December, 1989 and paid as of that date despite a later time for payment specified in any instrument that provides for payment of the interest, and the payment made to the account reduces the liability of the Treasurer under the instrument for interest by the amount paid. Idem

(4) Payments under subsections (2) and (3) shall be made from the Consolidated Revenue Fund. Payment  
from Consol-  
idated  
Revenue  
Fund

Transfer  
from the  
Teachers'  
Superan-  
nuation Fund

(5) As of the 31st day of December, 1989, the Treasurer shall transfer from the Superannuation Adjustment Fund account to the Teachers' Superannuation Fund the assets and liabilities in the Superannuation Adjustment Fund account, including assets transferred and payments made to that account under this section, and, as of that date, the Superannuation Adjustment Fund account ceases to exist in the Consolidated Revenue Fund.

Issuance of  
debentures

(6) The transfer of assets under subsection (5), other than debentures, shall be made by the issuance to the Teachers' Superannuation Fund of debentures of the Province of Ontario that are equal to the amount of the assets and that, in the Treasurer's opinion, provide for the payment of principal and interest on terms substantially equivalent to those on which the assets are held in the Superannuation Adjustment Fund account on the 31st day of December, 1989.

Idem

(7) Debentures referred to in subsection (6) may be in such amounts and upon such terms as to the payment of principal and interest, maturing at such time or times and either with or without the privilege of prepayment of the whole or any part of the principal amount of any such debenture as, in the Treasurer's opinion, meet the requirements of this section, and any debenture may provide that it is not assignable or transferable.

Transfer of  
assets

(8) As of the 1st day of January, 1990, the Treasurer shall transfer to the custody and control of the pension fund the assets which are held by the Teachers' Superannuation Fund on the 31st day of December, 1989.

Transfer of  
liabilities

(9) As of the 1st day of January, 1990, all liabilities of the Teachers' Superannuation Fund become liabilities of the pension fund.

Investments  
authorized  
1987, c. 35

(10) Despite the *Pension Benefits Act, 1987* and the regulations thereunder, the receipt and holding by the Board of debentures issued or transferred under this section shall not be considered imprudent or unreasonable or contrary to that Act and the regulations thereunder, and the nature, amount and terms of the debentures may be taken into account by the Board and any committee of the Board in determining future investments of the assets of the pension plan.

Non-  
application of  
1987, c. 35,  
s. 82

(11) Section 82 of the *Pension Benefits Act, 1987* does not apply to the transfers described in this section.

Temporary  
account  
authorized

(12) During the period from the 31st day of December, 1989 to the 30th day of June, 1990, the Treasurer may estab-



lish outside the Consolidated Revenue Fund one or more accounts for such period as the Treasurer considers advisable to facilitate the orderly transfer of assets to the pension fund and to facilitate administration of the pension plan.

**14.** The *Teachers' Superannuation Act, 1983*, as it read on the 31st day of December, 1989, continues to apply to the computation or payment of every allowance, annuity, deferred annuity or payment to the payment of which a person has become entitled under that Act prior to that date, and continues to apply in respect of every person who, within the meaning of that Act, has ceased to be a contributor before that date and is entitled to a deferred annuity under that Act.

Continued  
application  
1983, c. 84

**15.** Every allowance, annuity, deferred annuity or other payment under the *Teachers' Superannuation Act, 1983* or a predecessor Act or under the *Superannuation Adjustment Benefits Act*, including any payment authorized to be made from the Consolidated Revenue Fund, that, before the 1st day of January, 1990, a person is receiving, is entitled to receive, or is entitled to receive with the payment thereof until the year 1990 or later, shall be paid out of the pension fund in accordance with the Act under which entitlement to the payment arose.

Payment of  
pensions,  
predecessor  
Acts  
R.S.O. 1980,  
c. 419

**16.** All agreements entered into before the 31st day of December, 1989 by the Teachers' Superannuation Commission under the authority of clause 75 (1) (g) of the *Teachers' Superannuation Act, 1983* are continued and expire on the 30th day of June, 1990.

Certain  
agreements  
continued

**17.—(1)** Section 3 of the *Teaching Profession Act*, being chapter 495 of the Revised Statutes of Ontario, 1980, is amended by striking out "and" at the end of clause (d), by adding "and" at the end of clause (e) and by adding thereto the following clause:

- (f) to represent all members of the pension plan established under the *Teachers' Pension Act, 1989* in the administration of the plan and the management of the pension fund.

1989, c....

**(2)** Section 9 of the said Act is amended by adding thereto the following clause:

- (d) act as the representative of the majority of active members of the pension plan established under the *Teachers' Pension Act, 1989* including carrying out the following functions:

1989, c....



1. Appointing persons to be members of the Ontario Teachers' Pension Plan Board created under that Act.
2. Entering into an agreement with the Crown as described in section 10 or 11 of that Act.
3. Negotiating, agreeing to or directing amendments to the plan as permitted under that Act or an agreement entered into under that Act.
4. Entering into an agreement on behalf of the Federation to indemnify a person appointed under paragraph 1 against any costs sustained with respect to legal proceedings arising out of an act or omission done in the execution of that person's duties as a member of the Ontario Teachers' Pension Plan Board.

Repeals

**18.** The following are repealed on the 1st day of January, 1990:

1. The *Teachers' Superannuation Act, 1983*, being chapter 84.
2. The *Teachers' Superannuation Amendment Act, 1986*, being chapter 13.
3. The *Teachers' Superannuation Amendment Act, 1987*, being chapter 19.
4. Section 75 of the *Family Law Act, 1986*, being chapter 4.
5. Section 68 of the *Equality Rights Statute Law Amendment Act, 1986*, being chapter 64.

Commence-  
ment

**19.** This Act comes into force on the 31st day of December, 1989.

Short title

**20.** The short title of this Act is the *Teachers' Pension Act, 1989*.

## SCHEDULE 1

## ONTARIO TEACHERS' PENSION PLAN

## PART I

## INTERPRETATION

## 1.—(1) In this Schedule,

## Definitions

“active member” means a person employed in education who is making contributions under the plan and includes a person receiving long-term income protection benefits under an agreement approved by the employer and by whom or on whose behalf contributions are being made;

“active member on LTIP” means an active member as described in section 6;

“administrator” means the board of governors;

“average salary”, of a member, means the average salary determined in accordance with section 14;

“board of education” has the same meaning as “board” in subsection 1 (1) of the *Education Act*;

R.S.O. 1980,  
c. 129

“child” has the same meaning as in subsection 1 (1) of the *Family Law Act*, 1986;

1986, c. 4

“dependent child”, of a deceased member, means a child who has never been married and who,

(a) is less than eighteen years of age,

(b) is eighteen or more years of age but less than twenty-five years of age and is in full-time attendance at a school or university, having been in such attendance substantially without interruption since the child reached eighteen years of age or since the member died, whichever occurred later, or

(c) is a child other than a child described in clause (b), is eighteen or more years of age and is disabled, having been disabled without interruption since the time the child reached eighteen years of age or since the member died, whichever occurred later;

“designated capacity”, in relation to a person’s employment, means a position designated under section 114;

“designated organization” means an organization designated under subsection 112 (2);

“designated private school” means a school designated under subsection 112 (1);

“employed in education” means employed as described in section 2, 7, 8 or 9;

“member” means a person who, as a result of his or her employment in education, is entitled to benefits or to a refund of contributions under the pension plan;

- “re-employed pensioner” means a member receiving a retirement pension who becomes an active member under subsection 3 (4);
- “school year” means the twelve-month period that begins on the 1st day of September;
- 1987, c. 35 “spouse” has the same meaning as in section 1 of the *Pension Benefits Act, 1987*;
- “standard interest rate” means the interest rate determined under section 85;
- R.S.C. 1985, c. C-8 “Year’s Maximum Pensionable Earnings”, in relation to a year, means the Year’s Maximum Pensionable Earnings prescribed under the *Canada Pension Plan*.
- Qualification as a teacher (2) A person is considered to be qualified as a teacher,
- R.S.O. 1980, c. 129 (a) if the person is a teacher within the meaning of subsection 1 (1) of the *Education Act*; or
- (b) if a board of education has a letter of permission granted by the Minister of Education in respect of the person.
- Employment (3) A person is considered to be employed,
- (a) full-time, if the person is required to work throughout each work day of a year or of a session; and
- (b) part-time, if the person is required to work on a regular but not full-time basis.
- Idem (4) A person is considered to be employed on an occasional basis as a teacher and not part-time if the person is an occasional teacher within the meaning of section 1 of the *Education Act*.

## PART II

### PARTICIPATION

#### A. Membership in the Plan

- Eligibility for membership 2.—(1) Every person is eligible to be an active member of the pension plan who is qualified as a teacher and is employed,
- (a) as a teacher in a school within the meaning of subsection 1 (1) of the *Education Act*;
- (b) as a teacher in a school outside Ontario under a teacher exchange system authorized by the Minister of Education;
- (c) as a teacher by the minister of a ministry of the Government of Ontario;
- (d) as a teacher in a school or a class operated by the Metropolitan Toronto and Region Conservation Authority; or
- (e) in a designated capacity by a board of education.
- Idem (2) Every person is eligible to be an active member of the pension plan who is qualified as a teacher and is employed,

- (a) as a teacher in a designated private school; or
- (b) in a designated capacity by a designated organization.

(3) No person is eligible to be an active member of the pension plan, Exception

- (a) if the person is regularly employed outside Ontario and is performing services in Ontario under a teacher exchange system approved by the Minister of Education;
- (b) if the person contributes to a pension fund to which the Crown contributes, other than the *Canada Pension Plan*, the *Quebec Pension Plan* or the fund established under this plan; or R.S.C. 1985, c. C-8  
R.S.Q. 1977, c. R-9
- (c) if the person is seventy-one or more years of age.

3.—(1) Every person employed as described in subsection 2 (1) full-time or part-time becomes an active member of the plan on the later of, Commencement of membership

- (a) the 31st day of December, 1989; or
- (b) the date the employment contract begins.

(2) Subject to subsection 5 (1), every person employed as described in subsection 2 (2) full-time or part-time becomes an active member of the plan on the day that is the latest of, Idem

- (a) the 31st day of December, 1989;
- (b) the date the employment contract begins; or
- (c) the date the designation of the private school or the organization is effective.

(3) Subject to subsection 4 (1), every person employed in education on an occasional basis may elect to become an active member on or after the person's twenty-first day of employment in a school year. Idem

(4) Despite subsections (1), (2) and (3), every member receiving a retirement pension under the pension plan or a predecessor Act who becomes re-employed in education becomes an active member on the earlier of, Commencement of membership, re-employed pensioner

- (a) the member's ninety-sixth day of employment in a school year; or
- (b) the member's first day of employment in education following three school years during each of which the member has been re-employed for fewer than ninety-six days.

(5) A re-employed pensioner ceases to be an active member upon reaching seventy-one years of age. Termination of membership, re-employed pensioner

4.—(1) A person employed in education on an occasional basis who elects to become an active member continues to be an active member whenever the person is re-employed in education after making the election unless the person has terminated membership under Part IV. Election re occasional employee

(2) An active member described in subsection (1) shall inform the member's employer of his or her active membership whenever he or she becomes re-employed in education after making the election. Obligations

Election re  
designated  
private  
schools, etc.

5.—(1) A person employed full-time or part-time at a designated private school or a designated organization on the date the designation becomes effective may elect not to become an active member of the plan.

Time for  
election

(2) An election under this section is not effective unless delivered in writing to the governing body of the designated private school or designated organization and to the administrator,

(a) not later than three months after the effective date of designation for the private school or organization, if the person is qualified as a teacher when the designation takes effect; or

(b) not later than three months after the date the person becomes qualified as a teacher, if the person is not so qualified on the effective date of designation for the private school or organization.

Active  
member on  
LTIP

6.—(1) An active member who ceases to be employed in education because of a disability and who is receiving payments under a long term income protection agreement approved by the member's employer or former employer is entitled to continue as an active member of the plan.

Eligibility

(2) A person's eligibility to be an active member under this section ceases on the day that is the earlier of,

(a) the normal retirement date of the member; or

(b) the day the member begins receiving a pension under the pension plan.

Idem

(3) The active membership of a person described in subsection (1) continues only if the contributions required from an active member under the pension plan are made by or on behalf of the person.

Definition

(4) In subsection (1), "agreement" means an agreement to provide long term income protection in the event of a member's long term disability that is entered into by an insurer within the meaning of section 1 of the *Insurance Act* and,

R.S.O. 1980,  
c. 218

(a) the Minister of Education;

(b) a board of education;

R.S.O. 1980,  
c. 495

(c) the Ontario Teachers' Federation established under the *Teaching Profession Act*;

R.S.O. 1980,  
c. 464

(d) an affiliate within the meaning of section 1 of the *School Boards and Teachers Collective Negotiations Act*; or

(e) an authority approved by the administrator.

Active  
membership,  
university  
faculty

7.—(1) A member who, during an absence as defined in subsection 90 (1), becomes employed on the staff of a faculty of education of an Ontario university on or after the 31st day of December, 1989 becomes an active member of the plan.

Limitation

(2) A person is eligible for active membership under this section for a maximum of five school years.

Transitional  
re  
universities

8.—(1) A person who, on the 31st day of December, 1989, is qualified as a teacher and is employed full-time on the staff of a faculty of education of an Ontario university is an active member of the plan as long as the person continues in full-time employment at such a faculty.



(2) A person who, on the 31st day of December, 1989, is qualified as a teacher and is employed part-time on the staff of a faculty of education of an Ontario university is an active member of the plan as long as the person continues either part-time or full-time employment at such a faculty. Idem, part-time employee

9.—(1) This section applies with respect to a person who, under a predecessor of this Act, was deemed to be employed in education on the staff of a college of applied arts and technology. Transitional re CAATs

(2) A person who, on the 31st day of December, 1989, is employed full-time on the staff of a college of applied arts and technology is an active member of the plan as long as the person continues in full-time employment at such a college. Idem, full-time employee

(3) A person who, on the 31st day of December, 1989, is employed part-time on the staff of a college of applied arts and technology is an active member of the plan as long as the person continues in part-time or full-time employment at such a college. Idem, part-time employee

#### B. Credit for Service

10.—(1) An active member receives one year of credited service for working the number of hours or days normally worked during a school year by a full-time employee in the occupational group in which the member is employed. Credited service

(2) An active member receives credited service for part of a year in the proportion that the number of hours or days worked by the member during the school year bears to the number of hours or days normally worked during a school year by a full-time employee in the occupational group in which the member is employed. Idem, partial year

(3) No person shall receive credited service for employment without making the required contributions in respect of the employment. Limitation

(4) No person is entitled to receive more than one year of credited service in respect of the person's employment during one school year. Idem

(5) No person is entitled to accumulate more than thirty-five years of credited service under the plan. Idem

11.—(1) The length of a member's credited service determined under this section applies for the purpose of determining the member's entitlement to a benefit but does not apply for the purpose of calculating the amount of the benefit. Partial year

(2) If an active member accumulates more than twenty days but less than one year of credited service as determined under section 10 during one school year, the member's credited service shall be considered to be credited service for the whole year. Idem

(3) Subsection (2) does not apply with respect to a school year in which the member receives a pension. Idem

(4) For a person who becomes employed in education on or after the 31st day of December, 1989, subsection (2) does not include the part of a school year, if any, that precedes the date the person first becomes an active member. Idem

## C. Calculation of Pensionable Salary

Pensionable  
salary

**12.—(1)** A member's pensionable salary for a school year is the remuneration paid to the member during the school year respecting employment in education and excludes,

- (a) remuneration for services other than for employment in education;
- (b) perquisites related to employment;
- (c) payments related to accumulated sick leave or other employment benefit credits;
- (d) payments related to retirement or termination of employment; or
- (e) payments to reimburse the member for expenses incurred during the course of employment.

Idem

(2) Pensionable salary excludes the amounts described in clauses (1) (a) to (e) whether paid under a contract or gratuitously by an employer.

Idem

(3) The pensionable salary of a member who receives board or lodging related to employment in education shall be deemed to be such amount, having regard for the value of the board or lodging, as is determined by the administrator.

Pensionable  
salary re  
active  
member on  
LTIP

**13.—(1)** Subject to subsection (2), the pensionable salary for a school year for an active member on LTIP shall be considered to be the amount of the member's pensionable earnings for the school year in which the member became disabled.

Idem

(2) The pensionable salary for a school year for an active member on LTIP whose contribution is made under subsection 19 (2) shall be considered to be the amount used to calculate the amount of the contribution.

Average  
salary

**14.—(1)** The average salary of a member,

- (a) with more than five years' credited service is the average of the member's annual pensionable salary for the five school years during which it was highest; and
- (b) with five years' or less credited service is the average of the member's annual pensionable salary.

Part-time or  
occasional  
employee

(2) For the purpose of determining the average salary of a member employed part-time or on an occasional basis or an active member on LTIP whose LTIP payments are based upon a less than full-time salary, the annual pensionable salary of the member is calculated using the formula,

$$(A / B) \times C$$

in which,

"A" is the amount of the member's pensionable salary for the school year,

"B" is the lesser of,

- (a) the number of days of credited service accumulated by the member during the school year, and

- (b) the number of days normally worked during a school year by a full-time employee in the same occupational group as the member, and

"C" is the number of days worked during a school year by a full-time employee in the same occupational group as the member.

(3) Despite subsection (2), the annual pensionable salary for the final year of the member's employment in education shall be the lesser of,

- (a) the amount calculated under subsection (2); and
- (b) the average of the member's annual pensionable salary calculated under subsection (2) for each of the preceding years of the member's employment in education, to a maximum of four years, as adjusted for inflation in accordance with section 76 as if the annual pensionable salary were a pension.

#### D. Transitional

15. Every person considered under a predecessor of this Act to be employed in education who, on the 31st day of December, 1989, is contributing to the Teachers' Superannuation Fund shall be an active member of the pension plan and shall be considered to have accumulated credited service in an amount equal to the credit for service the person had accumulated under a predecessor of this Act.

Transitional  
re  
membership

16. A re-employed pensioner making contributions under the pension plan or a predecessor of this Act on or after the 1st day of September, 1989 up to the 1st day of January, 1990 is entitled to a refund of contributions, if any, made in respect of the first ninety-five days or less of employment during that period.

Re-employed  
pensioners

### PART III

#### CONTRIBUTIONS

##### A. Member Contributions

17.—(1) Every active member who is required to contribute to the *Canada Pension Plan* or to the *Quebec Pension Plan* shall contribute for a school year,

Amount of  
member's  
contribution  
R.S.C. 1985,  
c. C-8  
R.S.Q. 1977,  
c. R-9

- (a) 8.9 per cent of that portion of the member's pensionable salary below the amount of the Year's Basic Exemption as prescribed under the *Canada Pension Plan*;
- (b) 7.1 per cent of that portion of the member's pensionable salary from the amount of the Year's Basic Exemption up to and including the amount of the Year's Maximum Pensionable Earnings; and
- (c) 8.9 per cent of that portion of the member's pensionable salary that exceeds the amount of the Year's Maximum Pensionable Earnings.

(2) Every active member who is not required to contribute to the *Canada Pension Plan* or to the *Quebec Pension Plan* shall contribute 8.9 per cent of the member's pensionable salary for the school year.

Idem

Collection of  
member  
contributions

18.—(1) The employer of an active member shall deduct the amount the member is required to contribute under section 17 from the salary paid to the member.

Transfer of  
amount  
deducted

(2) An employer shall deliver to the administrator or deposit to the account of the pension fund on or before the last day of each month in which a member's salary is paid the amount deducted for the member's contribution.

Interest  
payable

(3) An employer shall pay interest on amounts in arrears from the date the payment is due to the date it is made, calculated at the standard interest rate plus 4 per cent.

Report to  
administrator

(4) An employer shall make such reports to the administrator as the administrator requires in respect of member contributions.

Contributions  
re active  
member on  
LTIP

19.—(1) The amount of the required contribution for an active member on LTIP is 8.9 per cent of the member's pensionable salary.

Inflation-  
adjusted  
pensionable  
salary

(2) An active member on LTIP may elect to calculate his or her required contribution using an amount selected by the member that is,

- (a) not less than the member's pensionable salary; and
- (b) not greater than the amount of the member's pensionable salary after it is adjusted for inflation under section 76, as if it were a pension.

Restriction re  
election

(3) An election under subsection (2) shall be made before the end of the school year to which it applies.

Notice to  
former  
employer

(4) A member who becomes an active member on LTIP shall notify the person who was his or her employer on the date of disability,

- (a) of the member's change of membership status; and
- (b) of the amount upon which the member's required contributions are to be calculated, if the member makes an election under subsection (2).

Minister's  
payments re  
active  
member on  
LTIP

20. The contributions required under subsection 19 (1) from an active member on LTIP who is receiving benefits under a long term income protection plan established under the *Public Service Act* shall be paid on behalf of the member by the Minister.

R.S.O. 1980,  
c. 418

Collection re  
active  
member on  
LTIP

21.—(1) The required contribution for an active member on LTIP shall be paid to the person who was his or her employer on the date of disability.

Idem

(2) Payments under subsection (1) must be made on or before the fifteenth day of the month following the month in which each payment under the long term income protection agreement is made to the member.

Increased  
contributions

(3) Despite subsection (2), if an active member on LTIP makes an election under subsection 19 (2), the member shall pay a lump sum before the 30th day of November in the school year for which the election is made equal to the amount of increase in the member's required contributions for the year that results from the election.

Transfer of  
contribution

(4) An employer to whom a payment in respect of an active member on LTIP is to be made under this section shall, whether or not the payment is made, deliver to the administrator on or before the last day of each



month in which the member's LTIP payment is made the amount of the member's required contribution together with interest thereon, if any.

(5) Despite subsection (4), an employer who receives a payment under subsection (3) shall deliver it to the administrator not later than the 31st day of December in the school year in which the employer receives it. Idem

(6) Interest is payable on payments in arrears made to the employer or by the employer from the date the payment is due to the date it is made, calculated at the standard interest rate plus 4 per cent. Interest payable

(7) An employer may maintain an action for the recovery of an amount paid to the administrator under subsection (4) if the employer has not received the corresponding payment of required contributions for an active member on LTIP. Cause of action

22. No member may contribute in one year with respect to employment in that year an amount greater than the amount that is allowed as a deduction from the member's income for the year for the purposes of the *Income Tax Act* (Canada). Limit on contributions  
R.S.C. 1952, c. 148

#### B. Employer Contributions

23.—(1) Employer contributions in respect of an active member employed as described in subsection 2 (1) shall be paid by the Minister. Liability for contributions

(2) Subsection (1) does not apply with respect to any contribution in relation to which the member is required under this pension plan to make the contribution that would otherwise be made by the Minister. Idem

(3) Employer contributions in respect of an active member employed as described in subsection 2 (2) or section 7, 8 or 9 shall be paid by the employer of the member. Idem

(4) Employer contributions in respect of an active member on LTIP shall be paid by the person making the employer contributions in respect of the member immediately before the date of disability. Idem

24.—(1) The Minister shall contribute in each year an amount equal to the required contributions made during the year before the preceding year by or on behalf of those members for whom the Minister is required to make employer contributions. Contributions by the Minister

(2) The Minister's contribution is due on the 1st day of January in each year and not as required under the *Pension Benefits Act, 1987*. Due date  
1987, c. 35

(3) Interest on the Minister's contribution is payable for the period beginning on the 1st day of June in the year preceding the year in which the payment is due and ending on the day the payment is made, calculated at the standard interest rate in effect on that 1st day of June. Interest payable

(4) The Minister shall deliver contributions to the administrator or deposit them to the account of the pension fund. Delivery

(5) To reduce the time between the date of payment mentioned in subsection (2) and the payment of contributions by or on behalf of those members for whom the Minister is required to make employer contributions, the Lieutenant Governor in Council may, despite subsections (1) and (3), by Order require the Minister to make payments for such number of months in the preceding year as are specified in the Order in respect of contributions Order of Lieutenant Governor in Council



in those months by or on behalf of those members for whom the Minister is required to make employer contributions.

Idem (6) An Order made under subsection (5) shall revise the period of time mentioned in subsection (1) in respect of which contributions by the Minister are computed so that it reflects the additional contributions required to be made by the Minister.

Idem (7) An Order under subsection (5) shall adjust the date from which interest is to be calculated under subsection (3) to reflect the reduced time between the last month in which contributions are made by or on behalf of those members for whom the Minister is required to make employer contributions and the month when the Minister pays an amount equal to those contributions.

Contributions by employers 25.—(1) An employer shall contribute in each month an amount equal to the required contributions made during the month by or on behalf of those members for whom the employer is required to make employer contributions.

Due date (2) An employer's contribution is due on the last day of the month.

Interest payable (3) Interest on an employer's contribution is payable from the date the payment is due to the date it is made, calculated at the standard interest rate plus 4 per cent.

Delivery (4) An employer shall deliver contributions to the administrator or deposit them to the account of the pension plan.

### C. Refund of Overpayments

Refund of contributions, error 26. The administrator shall refund contributions made in error and contributions not permitted under the pension plan together with interest thereon if the administrator received the contributions.

Overpayments 27.—(1) An active member who works a greater number of days in a school year than are normally worked by a full-time employee in the occupational group in which the member is employed is entitled to a refund of contributions in accordance with this section.

Idem (2) The person required to make employer contributions in respect of a member described in subsection (1) is entitled to a refund of employer contributions in accordance with this section, if the employer contributions have been paid.

Amount of refund (3) The amount of the refund of contributions is calculated using the formula,

$$A \times [1 - (B / C)]$$

in which,

“A” is the amount of the member's required contributions for employment in education during the school year,

“B” is the number of days normally worked in the school year by a full-time employee in the occupational group in which the member is employed, and

“C” is the number of days worked in the school year by the member for which the member's contributions have been made.

(4) Interest is payable on a refund of contributions from the last day of the school year until the refund is paid. Interest payable

(5) A refund of contributions shall be paid as a lump sum. Lump sum

#### PART IV

#### PAYMENTS UPON TERMINATION OF MEMBERSHIP

##### A. Vesting

28.—(1) Upon accumulating two years of credited service any part of which relates to employment on or after the 1st day of January, 1987, a member is entitled to a deferred pension in respect of credited service after that date. Vesting of benefits

(2) Upon accumulating ten years of credited service relating to employment for a period that is entirely or partly before the 1st day of January, 1987, a member is entitled to a deferred pension. Idem

(3) A deferred pension shall be calculated and paid in accordance with Part V. Payment of deferred pension

(4) No person is entitled to more than one deferred pension in respect of the same period of employment. Limit

29.—(1) A member who is not entitled to a deferred pension is entitled upon ceasing to be employed in education to terminate his or her membership in the plan by taking a refund of contributions in accordance with sections 31 and 32. Entitlement on termination of membership

(2) A member who is entitled to a deferred pension is entitled upon ceasing to be employed in education to terminate his or her membership in the plan by taking a refund described in section 33 or by a transfer of funds and a refund of excess contributions, if applicable, made in accordance with section 34. Idem

(3) Despite an earlier time required under the *Pension Benefits Act*, 1987 for paying refunds, a member is entitled to a refund of contributions ninety days after the date the member ceases to be employed in education, if no contributions are paid or required to be paid by or on behalf of the member. Limitation 1987, c. 35

30. A person who terminates his or her membership is not entitled to the rights and does not enjoy the privileges of a former member under the *Pension Benefits Act*, 1987. Rights of former members

##### B. Refunds and Transfers

31. A member who is not entitled to a deferred pension in respect of employment on or after the 1st day of January, 1987 is entitled to a refund of the member's contributions in respect of that employment together with interest thereon. Refund re post-1986 contributions

32.—(1) A member who has less than ten years of credited service and who is not entitled to a deferred pension relating to employment before the 1st day of January, 1987 is entitled to a refund in the amount of the member's contributions in respect of credited service before the 1st day of January, 1987 together with interest thereon. Refund re pre-1987 contributions

- Refund at or after sixty-five years of age (2) A member with less than ten years credited service who ceases to be employed in education in or after the year in which the member reaches sixty-five years of age is entitled to a refund equal to twice the amount of the member's contributions in respect of credited service before the 1st day of January, 1987 together with interest thereon.
- Refund re pre-1987 deferred pension Before reaching forty-five years of age 33.—(1) This section applies with respect to a deferred pension relating to a member's employment before the 1st day of January, 1987.
- (2) A member who ceases to be employed in education before reaching forty-five years of age is entitled to a refund in the amount of the member's contributions for credited service before the 1st day of January, 1987 together with interest thereon.
- On or after forty-five years of age (3) A member who ceases to be employed in education on or after reaching forty-five years of age is entitled to a refund in the amount of the member's contributions in respect of credited service before the 1st day of January, 1965 together with interest thereon.
- Transfer re deferred pension 1987, c. 35 34. A member entitled to a deferred pension who ceases to be employed in education is entitled to a transfer of the commuted value of the deferred pension to another pension savings arrangement and to a refund of excess contributions in accordance with section 43 of the *Pension Benefits Act, 1987*.
- Application for refund, etc. 35.—(1) A member shall apply for a refund of contributions or a transfer of funds in a form provided by the administrator.
- Payment of refund (2) A refund shall be paid in a lump sum.

## PART V

### RETIREMENT PENSIONS

#### A. Entitlement to Pension

- One pension only 36.—(1) No member is entitled to more than one retirement pension under the pension plan in respect of the same period of credited service.
- Idem (2) A member receiving a disability pension under the pension plan is not eligible to receive a retirement pension.
- Retirement (3) No member under the age of seventy-one is entitled to begin to receive a retirement pension while the member is employed in education.
- Normal retirement date 37. The normal retirement date of a member is the first day of the month following the date on which the member reaches sixty-five years of age.
- Entitlement to pension (2 year rule) 38.—(1) Subject to section 39, a member who has at least two years of credited service is entitled to receive a retirement pension for the member's lifetime calculated under subsection (3) and a payment calculated under subsection (4).
- Commence-ment (2) A retirement pension under this section begins as of the member's normal retirement date.
- Amount of pension (2 year rule) (3) The amount of the retirement pension, before adjustment for inflation, is calculated using the formula,

$$(A \times B) - C$$

in which,

"A" is 2 per cent of the member's average salary,

"B" is the number of years of the member's credited service relating to employment on or after the 1st day of January, 1987, and

"C" is the amount, if any, calculated under section 77 (CPP reduction).

(4) A member with less than ten years of credited service is entitled to a refund of contributions, if any, together with interest thereon relating to employment before the 1st day of January, 1987.

Payment,  
pre-1987  
service

39.—(1) A member who has at least ten years of credited service for employment in whole or in part before the 1st day of January, 1987 is entitled to receive a retirement pension for the member's lifetime calculated under subsection (3).

Entitlement  
to pension  
(10 year  
rule), transi-  
tional

(2) A retirement pension under this section begins as of the member's normal retirement date.

Commence-  
ment

(3) The amount of the retirement pension, before adjustment for inflation, is calculated using the formula,

Amount of  
pension (10  
year rule)

$$(A \times B) - C$$

in which,

"A" is 2 per cent of the member's average salary,

"B" is the number of years of the member's credited service, and

"C" is the amount, if any, calculated under section 77 (CPP reduction).

40.—(1) A member who has accumulated at least that number of years of credited service that, when added to the member's age upon termination of employment in education, totals ninety years is entitled to a retirement pension for the member's lifetime calculated under subsection (4).

Entitlement  
to pension  
(special early  
retirement)

(2) A member who ceases to be employed in education after the 31st day of May, 1987 and before the 1st day of September, 1990 and who has thirty-five years of credited service is entitled to a retirement pension for the member's lifetime calculated under subsection (4).

Idem (35  
year rule)

(3) A retirement pension under this section begins as of the beginning of the month following the date the member ceases to be employed in education or, at the election of the member, of any month thereafter that is not later than the month after the month in which the member reaches seventy-one years of age.

Commence-  
ment

(4) The amount of the retirement pension, before adjustment for inflation, is calculated using the formula,

Amount of  
pension

$$(A \times B) - C$$

in which,

"A" is 2 per cent of the member's average salary,

"B" is the number of years of the member's credited service, and

"C" is the amount, if any, calculated under section 77 (CPP reduction).

Early  
retirement  
option

41.—(1) A member may elect to begin to receive a retirement pension on the first day of any month after the month that is ten years before the member's normal retirement date.

Amount of  
early  
retirement  
pension

(2) The amount of the annual retirement pension, before adjustment for inflation, of a member who elects early retirement under subsection (1) shall be calculated using the formula,

$$[ A \times B \times ( 1 - C ) ] - D$$

in which,

"A" is 2 per cent of the member's average salary,

"B" is the number of years of the member's credited service,

"C" is an amount equal to 5 per cent times the lesser of,

(a) the number of years by which the member's age is less than sixty-five on the date the pension is to begin, and

(b) ninety minus the sum of,

(i) the number of years of the member's credited service determined under section 11, and

(ii) the member's age on the date the pension is to begin, and

"D" is the amount, if any, calculated under section 77 (CPP reduction).

Commuted  
value

(3) Despite subsection (2), the commuted value of the retirement pension received on early retirement shall be not less than the commuted value of the retirement pension to which the member would be entitled on the normal retirement date based upon the member's credited service up to the early retirement date.

Late  
retirement  
option

42.—(1) An active member may elect to begin to receive a retirement pension in any month after the member's normal retirement date until the month in which the member reaches seventy-one years of age.

Amount of  
late  
retirement  
pension

(2) The amount of the annual retirement pension, before adjustment for inflation, of a member who elects late retirement as described in subsection (1) is calculated using the formula,

$$( A \times B ) - C$$

in which,

"A" is 2 per cent of the member's average salary,

"B" is the number of years of the member's credited service, and



"C" is the amount, if any, calculated under section 77 (CPP reduction).

43.—(1) No retirement pension is payable to a re-employed pensioner while the re-employed pensioner is an active member. Re-employed pensioner

(2) If a re-employed pensioner accumulates one year or more of credited service after becoming an active member, other than by means of a purchase of credited service or by the annualization of a partial year of credited service under section 10, and, if the re-employed pensioner makes an application to the administrator, the amount of the pensioner's retirement pension shall be recalculated in accordance with the terms of the pension plan in force on the date of the application. Recalculation of pension

(3) A re-employed pensioner who does not accumulate one year of credited service after becoming an active member is entitled when the re-employment ceases, Exception

(a) to the resumption of the retirement pension to which the pensioner was entitled immediately before becoming re-employed; and

(b) to the refund of the member's required contributions, together with interest thereon, made during the re-employment.

(4) A re-employed pensioner who receives pension payments to which the pensioner is not entitled shall repay the amount so received, together with interest thereon, before becoming entitled to further payments under the pension plan. Repayment

#### B. Payment of Retirement Pensions

44.—(1) A member who wishes to begin receiving a retirement pension shall apply to the administrator. Application for retirement pension

(2) A member who does not apply to begin receiving a retirement pension shall be deemed to do so on the day that is the later of, Deemed application

(a) the day the member ceases to be employed in education; or

(b) the day the member reaches seventy-one years of age.

45.—(1) The administrator shall begin payment of a member's retirement pension not later than the later of, Payment of pension

(a) the month following the day the member ceases to be employed in education; or

(b) the month next following the month in which application for the pension is complete.

(2) The administrator shall pay a retirement pension in monthly instalments, one month in arrears, on the last day of the month. Monthly instalments

(3) Interest shall be paid on pension payments from the date an application is complete until the date each payment is made, if the administrator does not begin paying a pension before the later of, Interest payable

(a) the end of the month in which the member becomes entitled to a pension; or

- (b) the date that is three months after the month in which the member's application is complete.

Notice of re-employment      **46.—**(1) A member receiving a retirement pension shall notify the administrator in writing promptly upon becoming re-employed in education.

Failure to give notice      (2) A member who fails to comply with subsection (1) is not entitled to receive retirement pension payments for a period during which notice should have been given under that subsection.

Repayment of pension      (3) A member who receives pension payments to which the member is not entitled shall repay the amount so received, together with interest thereon, before becoming entitled to further payments under the pension plan.

## PART VI

### DISABILITY PENSIONS

#### A. Entitlement to Disability Pension

Entitlement to disability pension      **47.—**(1) This section applies to a member with at least ten years of credited service who becomes disabled while employed in education and who, as a result of the disability, ceases before the normal retirement date to be employed in education.

Full disability pension      (2) If the administrator finds that a member described in subsection (1) is incapable of further employment, the member is entitled to a full disability pension for the member's lifetime.

Partial disability pension      (3) If the administrator finds that a member described in subsection (1) is incapable of further employment in education, the member is entitled to a partial disability pension for the member's lifetime.

Eligibility      (4) A member who has previously terminated his or her membership and who returns to membership and purchases credited service for previous employment in education is not eligible to receive a disability pension until the member accumulates two additional years of credited service.

Effect of re-employment      **48.—**(1) A member receiving a full disability pension who becomes employed ceases to be entitled to a full disability pension.

Idem      (2) A member receiving a disability pension who becomes employed in education as a teacher ceases to be entitled to a disability pension.

Reduced partial disability pension      (3) A member receiving a disability pension who becomes employed in education otherwise than as a teacher is entitled to receive a reduced partial disability pension.

Application      (4) This section applies with respect to a member who is receiving a disability pension on or after the 31st day of December, 1989.

Amount of full disability pension      **49.—**(1) The amount of the annual full disability pension, before adjustment for inflation, for a member is calculated using the formula,

$$(A \times B) - C$$

in which,

“A” is 2 per cent of the member's average salary,

"B" is the number of years of the member's credited service under the plan, and

"C" is the amount, if any, calculated under section 77 (CPP reduction).

(2) The amount of a partial disability pension, before adjustment for inflation, for a member is calculated using the formula,

Amount of  
partial  
disability  
pension

$$[ ( A \times B ) ( 1 - C ) ] - D$$

in which,

"A" and "B" have the same meaning as in the formula for calculating the amount of a full disability pension,

"C" is an amount equal to 2.5 per cent times the lesser of,

(a) the number of years by which the member's age on the date the pension begins is less than the member's age at the normal retirement date, and

(b) ninety minus the sum of,

(i) the number of years of the member's credited service determined under section 11, and

(ii) the member's age on the date the pension begins, and

"D" is the amount, if any, calculated under section 77 (CPP reduction).

(3) The annual amount of the partial disability pension, before adjustment for inflation, shall not be less than 75 per cent of the full disability pension.

Limitation

(4) The annual amount of a member's reduced partial disability pension, before adjustment for inflation, is calculated using the formula,

Amount of  
reduced  
partial  
disability  
pension

$$A - [ ( A + B ) - C ]$$

in which,

"A" is the amount of the member's disability pension immediately before the member begins the new employment in education,

"B" is the salary for the year from the member's new employment in education,

"C" is the annual salary of the member immediately before the member ceased, as a result of the disability, to be employed in education, increased in respect of each year after the person so ceased to be employed up to the year in which the member begins the new employment in education,

(a) as if it were being adjusted for inflation in accordance with section 76, for periods beginning on or after the 31st day of December, 1989, and

R.S.O. 1980,  
c. 490

- (b) in the same manner as a pension would be increased under the *Superannuation Adjustment Benefits Act*, for periods ending before the 31st day of December, 1989, and

in which the amount represented by " $[(A + B) - C]$ " is the greater of,

- (c) zero, and

- (d) the amount otherwise determined in accordance with the definitions of "A", "B" and "C".

Resumption  
of disability  
pension

**50.**—(1) Subject to subsection (2), if a member becomes re-employed in education and ceases to receive a disability pension under the pension plan or a predecessor Act or begins to receive a reduced disability pension, the member is entitled upon ceasing the re-employment to the resumption of the original disability pension without adjustment of the amount of the pension.

Idem

(2) A member described in subsection (1) who completes the equivalent of two years of full-time employment in education after becoming re-employed and then ceases to be so employed shall make a fresh application for a disability pension, and the terms of the pension plan on the date the application is made shall apply with respect to the member's entitlement to a pension.

Application

(3) This section applies with respect to a member who applies for a pension on or after the 31st day of December, 1988.

Change of  
disability  
status re  
survivor  
pension

**51.**—(1) This section applies if a member receiving a partial disability pension or a reduced partial disability pension dies while the administrator is considering whether the member is entitled to a full disability pension based upon fresh medical evidence concerning the member's disability.

Determi-  
nation by the  
administrator

(2) Having regard to the facts established at the date of the member's death, the administrator may determine that the member was entitled, immediately before the date of death, to a full disability pension.

Deemed  
receipt of full  
disability  
pension

(3) For the purpose of calculating the amount of a survivor pension or a child's pension in respect of the member, the member shall be deemed to have been receiving a full disability pension on the date of death.

#### B. Payment of Disability Pension

Application  
for disability  
pension

**52.**—(1) A member shall apply for a disability pension within two years after the date when the member ceases, as a result of the disability, to be employed in education.

Idem

(2) The administrator shall accept an application for a disability pension that is made after the time described in subsection (1) if the administrator is satisfied,

- (a) that the delay in making the application resulted from a delay in diagnosing the disability; or
- (b) that the member was unable, because of the effects of the disability, to make the application within the time described in subsection (1).

Proof of  
disability

(3) No application for a disability pension shall be considered by the administrator until the administrator has received,

- (a) the certificate of a legally qualified medical practitioner designated by the administrator, certifying that the applicant became mentally or

physically disabled while employed in education and indicating the nature and degree of the disability; and

- (b) a report of the medical referee of the administrator containing such recommendations as the medical referee considers proper with regard to the granting of a disability pension to the applicant.

**53.—**(1) Subject to subsection (2), a member's disability pension shall begin as of the first day of the month following the month in which the member ceases to be employed in education. Commence-  
ment of  
disability  
pension

(2) No disability pension shall begin as of a date earlier than one year before the date the administrator receives the completed application for the pension. Idem

(3) A member's reduced partial disability pension shall begin as of the first day of the month following the month in which the member becomes re-employed. Reduced  
partial  
disability  
pension

(4) The administrator shall pay a disability pension in monthly instalments, one month in arrears. Monthly  
instalments

(5) Disability pension payments are due on the last day of the month. Due date

(6) Interest shall be paid on overdue pension payments if the administrator does not begin paying a pension by the end of the month in which the member becomes entitled to receive it. Interest  
payable

**54.—**(1) The administrator may at any time require a member who is receiving a disability pension to furnish evidence, in such form as the administrator directs, of the member's mental or physical condition. Evidence of  
medical  
condition

(2) If the member fails to furnish evidence within a reasonable time that his or her condition continues to be of a nature that entitles the member to receive the disability pension, the administrator shall terminate payment of the pension. Failure to  
furnish  
evidence

(3) If the administrator terminates payment of a full disability pension, the member may request the administrator to review the decision to terminate payment. Review by  
administrator

(4) If the administrator is satisfied upon reviewing a decision to terminate payment that the member is entitled to a disability pension under section 47 or 48, the administrator shall pay the disability pension. Idem

**55.—**(1) A member receiving a disability pension shall notify the administrator in writing promptly upon becoming employed or changing employment. Notice of re-  
employment

(2) A member who fails to comply with subsection (1) is not entitled to a disability pension for a period when notice should have been given under that subsection. Failure to  
give notice



Repayment  
of pension

(3) A member who receives pension payments to which the member is not entitled shall repay the amount so received, together with interest thereon, before becoming entitled to further payments under the pension plan.

## PART VII

### BENEFITS UPON DEATH

#### A. Upon the Death of a Member not Entitled to a Pension

Refund of  
contributions

**56.** The personal representative of a member who dies without becoming entitled to a deferred pension is entitled to a refund of the member's contributions together with interest thereon.

#### B. Upon the Death of a Member Entitled to a Deferred Pension

Pre-re-  
irement  
(spousal)  
death benefit

**57.—**(1) If a member who is entitled to a deferred pension or a disability pension dies before the first instalment of the pension is due, the person who is the spouse of the member on the date of death is entitled to receive,

(a) the benefit described in section 58 in respect of the member's employment, if any, before the 1st day of January, 1987; and

(b) the benefit described in section 59, in respect of the member's employment, if any, on or after the 1st day of January, 1987.

Application

(2) Subsection (1) does not apply if the member and the spouse are living separate and apart on the date of death of the member.

Pre-1987  
(spousal)  
death benefit

**58.—**(1) This section applies with respect to that portion of the death benefit that relates to a member's employment before the 1st day of January, 1987.

Survivor  
pension

(2) The spouse of a member with ten years or more credited service is entitled to the survivor pension described in subsection (3) for the lifetime of the spouse.

Pre-1987  
survivor  
pension

(3) The amount of the survivor pension is equal to one-half of the member's retirement pension based upon the member's credited service for employment before the 1st day of January, 1987 and shall be calculated as if the deceased member had become entitled to his or her retirement pension on the date of death.

Refund of  
contributions

(4) The spouse of a member with less than ten years of credited service is entitled to a refund of the member's contributions for employment before the 1st day of January, 1987 together with interest thereon.

Post-1986  
(spousal)  
death benefit

**59.—**(1) This section applies with respect to that portion of the death benefit that relates to a member's employment on or after the 1st day of January, 1987.

Benefit

(2) The spouse of a member with two years or more credited service is entitled to the benefit described in subsection (4).

Refund of  
contributions

(3) The spouse of a member with less than two years of credited service is entitled to a refund of the member's contributions for employment on or after the 1st day of January, 1987 together with interest thereon.

Idem

(4) The benefit referred to in subsection (2) is,

(a) a lump sum payment equal to the commuted value of the deferred pension to which the member was entitled for credited service for employment on or after the 1st day of January, 1987; or

(b) an immediate or a deferred survivor pension for the lifetime of the spouse for credited service for the member's employment on or after the 1st day of January, 1987 calculated as if the member had become entitled to a retirement pension on the date of death.

(5) The commuted value of a pension referred to in clause (4) (b) shall be at least equal to the commuted value of the deferred pension to which the member would have been entitled in respect of his or her employment on or after the 1st day of January, 1987. Commuted value

(6) The spouse may elect the form of benefit to be paid under subsection (4) and a spouse who does not do so within twelve months after the death of the member shall be deemed to have elected to receive an immediate survivor pension. Election

(7) A spouse who elects to receive a deferred survivor pension may elect to begin to receive the pension at any time up to the month after the month in which the spouse reaches seventy-one years of age. Deferred survivor pension

**60.—**(1) This section applies with respect to the dependent children of a member entitled to a deferred pension or a disability pension who died before the first instalment of the pension was due and, Pre-retirement child's pension

(a) who had a spouse who became entitled to a survivor pension who subsequently died; or

(b) who did not have a spouse entitled to a survivor pension.

(2) Subject to subsection (3), each dependent child of a member is entitled upon the death of the spouse or the member, as the case may be, to receive a child's pension while the child remains a dependent child. Entitlement to child's pension

(3) No child's pension is payable in respect of the credited service of a deceased member for which the spouse of the member received the lump sum payment described in clause 59 (4) (a). Exception

(4) The amount of the annual child's pension is the amount of the survivor pension to which a spouse of the member was or would have been entitled after the death of the member, shared equally among the dependent children. Amount of child's pension

(5) The share of the child's pension of each of the children who ceases to be a dependent child accrues to the remaining dependent children, if any. Share accrues to others

**61.—**(1) A beneficiary designated by a member entitled to a deferred pension or a disability pension is entitled to the benefit described in subsection (2), Benefit to beneficiary

(a) if the member dies before the first instalment of the pension is due; and

(b) if, on the date of death, the member does not have a spouse or a dependent child entitled to a benefit payable on his or her death.

(2) The benefit is a lump sum payment equal to the commuted value of the deferred pension to which the member was entitled for credited service for employment on or after the 1st day of January, 1987. Amount of benefit

Benefit to  
estate

**62.—**(1) The estate of a member entitled to a deferred pension or a disability pension who dies before the first instalment of the pension is due is entitled to the payments described in this section.

Idem, no  
others  
entitled

(2) If no other person is entitled to a benefit on the death of the member, the estate is entitled to,

- (a) a refund of the member's contributions for employment before the 1st day of January, 1987 together with interest thereon; and
- (b) a lump sum payment equal to the commuted value of the deferred pension to which the member was entitled for credited service for employment on or after the 1st day of January, 1987.

Residual  
entitlement

(3) If another person is entitled to a benefit on the death of the member, the estate is entitled to a refund of the amount by which the member's contributions together with interest thereon exceeds the amount paid to the other person together with interest thereon.

### C. Upon the Death of a Pensioner

Survivor  
pension,  
spouse

**63.—**(1) If a member is receiving a retirement or a disability pension on the date of death, the person who is the spouse of a member on the date the first instalment of the pension was due is entitled to the survivor pension described in subsection (3) or (4) for the spouse's lifetime.

Application

(2) Subsection (1) does not apply if the member and the spouse were living separate and apart on the date the first instalment of the member's pension was due.

Amount of  
survivor  
pension

(3) Subject to sections 64 and 65, if the member was receiving a retirement pension on the date of death, the amount of the annual survivor pension, before adjustment for inflation, payable to the surviving spouse shall be not less than 50 per cent of the pension,

- (a) that was being paid to the member at the date of death, if the member was at least sixty-five years of age on the date of death; or
- (b) that would have been paid to the member as of the first day of the month next following the month in which he or she would have reached sixty-five years of age, if the member was less than sixty-five years of age on the date of death.

Idem

(4) Subject to sections 64 and 65, if the member was receiving a disability pension on the date of death, the amount of the annual survivor pension, before adjustment for inflation, payable to the surviving spouse shall be not less than 50 per cent of the member's disability pension on the date of death.

Spousal  
election re  
survivor  
pension  
1987, c. 35

**64.—**(1) In the absence of a joint waiver by a member and the member's spouse of the spouse's entitlement under subsection 45 (3) of the *Pension Benefits Act, 1987* (amount of survivor benefit), the amount of the survivor pension payable on the death of the member shall be not less than 60 per cent of the pension paid to the member during their joint lives.

Waiver void

(2) A waiver referred to in subsection (1) is void if it is delivered to the administrator more than twelve months before the date that the first instalment of the member's pension is due or after the date that the first instalment is due.

(3) In the absence of a waiver referred to in subsection (1), the amount of the pension payable to the member shall be actuarially reduced to allow for payment of the increased survivor pension in accordance with subsection (1). Adjustment of member's pension

(4) This section does not apply with respect to a member who, before the 1st day of January, 1988, began to receive a pension under a predecessor Act. Application

**65.—(1)** A member may direct the administrator to increase the amount of a survivor pension that may become payable under section 63 in respect of the member to an amount equal to 55, 65, 70 or 75 per cent of the member's pension that would be payable if the amount of the pension were calculated without regard to this section. Increase of survivor pension

(2) A direction must be given in writing and must be delivered to the administrator at least two years before the earlier of, Time limit

(a) the member's normal retirement date; or

(b) the date the member's pension begins to be paid.

(3) The administrator shall act on a direction delivered after the deadline specified in subsection (2) and before the member applies for a retirement pension if the administrator is satisfied that the member is in good health having regard to the member's age. Idem

(4) The amount of the pension payable to the member shall be actuarially reduced to allow for payment of the increased survivor pension in accordance with the direction. Adjustment of member's pension

(5) The commuted value of pension paid to the member including the commuted value of the survivor benefit shall not be less than the commuted value of the pension that would otherwise be payable to the member. Commuted value

(6) A member may revoke a direction given under this section by a written revocation delivered to the administrator before the member begins receiving a pension. Revocation of direction

(7) A direction given under this section by a member is void if the member dies before applying for a pension. Direction void

**66.—(1)** In this section, "new spouse", in relation to a member, means a person who becomes the spouse of the member after the member begins to receive a retirement or disability pension. Survivor pension, new spouse

(2) A member receiving a retirement or disability pension who does not have a spouse eligible to receive a survivor pension under section 63 may, while receiving the pension, direct the administrator to provide a survivor pension to a new spouse. Idem

(3) A direction must be given in writing and must be delivered to the administrator on or before the later of, Time limit

(a) ninety days after the date on which the member becomes the spouse of the new spouse; or

(b) if immediately before the member becomes the spouse of the new spouse there is a child who would be entitled upon the death of the member to receive a child's pension under section 69, ninety days after the date on which the child ceases to be eligible to receive the child's pension.



Idem	(4) The administrator shall act on a direction delivered after the deadline specified in subsection (3) if the administrator is satisfied that the member is in good health having regard to the member's age.
Amount of survivor pension	(5) In giving the direction, a member receiving a retirement pension shall direct the administrator to pay a survivor pension in the amount of 50, 55, 60, 65, 70 or 75 per cent of the pension that would otherwise be payable on the first day of the month next following the month in which the member becomes the spouse of the new spouse.
Adjustment of member's pension	(6) The amount of a retirement pension payable to the member shall be actuarially reduced to allow for payment of the survivor pension in accordance with the direction.
Idem	(7) The actuarial reduction required by subsection (6) shall be based upon the ages of the member and of the spouse on the last day of the month in which the direction is delivered to the administrator.
Payment of survivor pension	(8) The administrator shall pay the survivor pension in accordance with the direction but not while there is a person who is eligible to receive a child's pension in respect of the member.
Survivor pension, predecessor Acts	<b>67.</b> —(1) This section applies with respect to a member who, before the 1st day of September, 1984, ceased to be employed in education within the meaning of a predecessor of this Act and who became the spouse of a person after ceasing that employment.
Direction re survivor pension	(2) A member described in subsection (1) may direct the administrator to provide a survivor benefit for the member's spouse and section 66 applies with respect to the direction with necessary modifications.
Time limit	(3) A direction under this section shall be delivered to the administrator on or before the later of,  (a) the 31st day of March, 1990; or  (b) if on the 31st day of December, 1989 there is a child who would be entitled upon the death of the member to receive a survivor allowance under a predecessor of this Act, ninety days after the date on which the child ceases to be eligible to receive the survivor allowance.
Idem	(4) The administrator shall act on a direction delivered after the deadline specified in subsection (3) if the administrator is satisfied that the member is in good health having regard to the member's age.
Deemed direction	(5) A member described in subsection (1) who dies on or before the 31st day of March, 1990 without having given a direction under this section shall be deemed to have given it on that date and shall be deemed to have directed the administrator to pay a 50 per cent survivor pension.
No pension for earlier period	(6) No survivor pension is payable under this section in respect of a period before the 31st day of December, 1989.
Survivor pension (prior inquiry)	<b>68.</b> —(1) This section applies with respect to a person who became the spouse of a member described in subsection 67 (1) after the member ceased to be employed in education within the meaning of a predecessor of this Act.
Idem	(2) This section does not apply unless the member has ceased to be a member before the 31st day of December, 1989 because he or she has died.



(3) A spouse described in subsection (1) is entitled to a survivor pension calculated from the date of a written inquiry respecting a survivor pension, Survivor pension

(a) made to the Teachers' Superannuation Commission before the 31st day of December, 1989; or

(b) made to the administrator on or after the 31st day of December, 1989.

(4) The amount of the survivor pension is 50 per cent of the amount of the member's retirement pension on the date of the member's death adjusted for inflation as if it were a pension for the period from the date of the member's death to the date the spouse becomes entitled to the survivor pension. Amount of pension

**69.—**(1) This section applies with respect to the dependent children of a member who died while receiving a retirement or disability pension and, Child's pension

(a) who had a spouse who died after becoming entitled to a survivor pension; or

(b) who did not have a spouse entitled to a survivor pension.

(2) Each dependent child of a member, upon the death of the spouse or the member, as the case may be, is entitled to a child's pension while remaining a dependent child. Entitlement to child's pension

(3) The amount of the annual child's pension is the amount of the survivor pension to which a spouse of the member was or would have been entitled after the death of the member, shared equally among the dependent children. Amount of child's pension

(4) The share of the child's pension of each of the children who ceases to be a dependent child accrues to the remaining dependent children, if any. Share accrues to others

**70.—**(1) A beneficiary designated by a member is entitled to a beneficiary's pension upon the death of a member, Beneficiary's pension

(a) who was receiving a retirement or disability pension on the date of death; and

(b) who did not have a spouse entitled to a survivor pension or a child entitled to a child's pension on the date of death.

(2) A direction must be given in writing and must be delivered to the administrator at least two years before the earlier of, Time limit

(a) the member's normal retirement date; or

(b) the date the member's pension begins to be paid.

(3) The administrator shall act on a direction delivered after the deadline specified in subsection (2) and before the member applies for a retirement pension if the administrator is satisfied that the member is in good health having regard to the member's age. Idem

(4) In giving the direction, the member shall direct the administrator to pay a beneficiary's pension in the amount of 50, 55, 60, 65, 70 or 75 per cent of the member's pension that would otherwise be payable on the date Amount of beneficiary's pension

of the member's death if the amount of the pension were calculated without regard to this section.

Adjustment  
of member's  
pension

(5) The amount of the pension payable to the member shall be actuarially reduced to allow for payment of the beneficiary's pension in accordance with the direction.

Revocation  
of direction

(6) A member may revoke a direction by a written revocation delivered to the administrator before the member applies for a pension.

Direction  
void

(7) A direction given under this section by a member is void if the member dies before beginning to receive a pension.

Benefit to  
estate

71. The estate of a member who was receiving a pension on the date of death is entitled to a refund of the amount by which the member's contributions together with interest thereon exceeds the sum of the amount paid to the member and the amount, if any, paid to every other person who was entitled to a benefit on the member's death, together with interest thereon.

#### D. Payment of Death Benefits

Commence-  
ment of  
pension

72.—(1) A pension that is payable immediately on the death of a member who was not receiving a retirement or disability pension on the date of death shall begin as of the day after the day the member dies.

Idem

(2) A pension that is payable on the death of a member who was receiving a retirement or disability pension on the date of death shall begin as of the first day of the month after the month in which the member dies.

Payments to  
estate

73.—(1) If the administrator is unable to locate a personal representative of the estate of a deceased member, the administrator may pay into court any payments that under the pension plan are required to be made to the estate.

Missing  
beneficiary

(2) If the administrator is unable, after making reasonable inquiries, to locate an individual who is entitled to a death benefit under the pension plan or a beneficiary designated by the deceased member under the *Pension Benefits Act, 1987*, the administrator shall pay to the estate of the deceased member one year after the date of death the amount to which the estate is otherwise entitled when no other person is entitled to a benefit on the death of the member.

1987, c. 35

Missing  
beneficiary  
found

(3) If an individual entitled to a death benefit under the pension plan or a beneficiary designated by the deceased member under the *Pension Benefits Act, 1987* applies for the benefit after the administrator makes a payment under subsection (2), the administrator shall pay the individual the amount of the benefit to which the individual is entitled less the amount paid to the estate by the administrator.

Interest  
payable

(4) The administrator shall pay interest on money payable under this section calculated from the date of death of the member to the date the money is paid.

Discharge

(5) The administrator is discharged on making a payment in accordance with this section.

Interpleader,  
more than  
one applicant  
R.S.O. 1980,  
c. 488

74.—(1) In this section, "court" has the same meaning as in Part V of the *Succession Law Reform Act*.

(2) If more than one person applies to the administrator for a benefit in respect of a deceased member, the court, on application by the administrator, by order may direct payment of the benefit or part thereof to one or more of the applicants and shall specify the proportion of the benefit that shall be paid to each of them.

Court may order

(3) The administrator's application shall be made in the same manner as an application under Part V of the *Succession Law Reform Act*.

Application to court  
R.S.O. 1980,  
c. 488

(4) Section 62 of the *Succession Law Reform Act* applies with necessary modifications in respect of the allocation of proportions of the benefit and, for the purpose, "dependant" means spouse, child or beneficiary of the deceased member.

Application of  
R.S.O. 1980,  
c. 488, s. 62

## PART VIII

### BENEFITS AND PAYMENTS — GENERAL

#### A. Adjustments for Inflation

75.—(1) Every retirement pension, disability pension, survivor pension, child's pension and beneficiary's pension shall be adjusted for inflation in accordance with section 76.

Inflation adjustment, pensions

(2) Every deferred pension payable under the plan shall be adjusted for inflation in accordance with section 76 for the period beginning when the member ceases to be employed in education and ending when the pension begins.

Idem, deferred pensions

(3) No pension or deferred pension shall be adjusted under this section for inflation in respect of a period before the 31st day of December, 1989.

Limitation

76.—(1) In the formulas in this section,

Calculation of inflation adjustments

"A" is the carry forward determined for the immediately preceding year,

"B" is the basic ratio for the year,

"C" is the adjustment ratio for the year,

"D" is the basic ratio for the year next following the year when the member for whose credit in the pension plan the pension in respect of which the formula is applied is payable ceased to be employed in education, and shall be calculated to a maximum of 1.080 or to a minimum of 1.000, and

"E" is the number of full months in the year that are after the month in the year when the member for whose credit in the plan the pension in respect of which the formula is applied is payable ceased to be employed in education.

(2) In this section,

Definitions

"accumulated adjustment ratio", for the pension of a person, means the product of the multiplication of all adjustment ratios for the years in the period commencing with the year when the member for whose credit in the plan the pension is payable ceased to be employed in education and

ending with the year for which the accumulated adjustment ratio is being determined;

“adjustment ratio”, for the pension of a person, means,

- (a) for any year for the year 1976 and for the year when the member for whose credit in the plan the pension is payable ceased to be employed in education, 1.000,
- (b) if the member for whose credit in the plan the pension is payable ceased to be a member of the plan in or after the year 1975, for the year next following the year when the member for whose credit in the plan the pension is payable ceased to be employed in education, the ratio determined by the formula “ $[(D - 1.000) \times E / 12] + 1.000$ ”, and
- (c) for the later of the year 1976 and the second year after the year when the member for whose credit in the plan the pension is payable ceased to be employed in education and for any subsequent year, the ratio determined by the formula “ $A + B$ ” calculated to a maximum of 1.080 or to a minimum of 1.000;

“basic ratio”, for a year, means the ratio expressed to three decimal places that the average for the Consumer Price Index over the last twelve months of the twenty-four-month period ending with the 30th day of September in the immediately preceding year bears to the average for the Consumer Price Index over the first twelve months of that period;

“carry forward”, with respect to the pension of a person, means,

- (a) for any year before the year 1976, for the year when the member for whose credit in the plan the pension is payable ceased to be employed in education and for the year next following that year, nil, and
- (b) for the later of the year 1976 and the second year following the year when the member for whose credit in the plan the pension is payable ceased to be employed in education and for any subsequent year, the positive or negative number determined by the formula “ $A + B - C$ ”;

R.S.C. 1985,  
c. S-19

“Consumer Price Index” means the Consumer Price Index for Canada as published by Statistics Canada under the authority of the *Statistics Act* (Canada);

1983, c. 84

“member” includes a contributor within the meaning of the *Teachers' Superannuation Act, 1983* or a predecessor Act;

“pension” means a pension to which a person is entitled from the plan other than the adjustment for inflation provided by this section, and an allowance, annuity, deferred annuity or other periodic payments to which a person has become entitled under the *Teachers' Superannuation Act, 1983* or a predecessor Act;

“plan” includes the pension plan established under the *Teachers' Superannuation Act, 1983* and any predecessor Act.

Payment of  
inflation  
adjustment

(3) The annual amount of pension payable to a person from the pension fund shall, commencing with the year when payment of the pension is to commence and in each subsequent year that the pension continues to be payable, be adjusted for inflation by multiplying the annual amount of the pension by the accumulated adjustment ratio for the pension of the person



for that year, and the amount by which the pension thus adjusted exceeds the annual amount of pension before the adjustment in each year shall be paid to the person entitled to receive the pension for which it is calculated at the same times, in the same manner and subject to the same terms and conditions as apply to the pension in respect of which it is paid.

(4) The ratio determined for the year 1990 under the *Superannuation Adjustment Benefits Act* does not apply to a pension to which this section applies. Ratio not to apply  
R.S.O. 1980, c. 490

#### B. CPP Reduction

77.—(1) If a member has contributed to the *Canada Pension Plan* or the *Quebec Pension Plan*, the amount of the member's retirement pension, full disability pension or partial disability pension shall be reduced by the amount calculated under subsection (4). CPP reduction for pensions  
R.S.C. 1985, c. C-8  
R.S.Q. 1977, c. R-9

(2) A reduction of a member's pension shall apply with respect to pension payments due on or after the earlier of, Commence-  
ment,  
retirement  
pension

(a) the date on which the member reaches sixty-five years of age; or

(b) the date when the first instalment of the member's disability pension, if any, under the *Canada Pension Plan* or the *Quebec Pension Plan* is due.

(3) A reduction in respect of a disability pension shall apply with respect to pension payments due on or after the date when the first instalment of the member's disability pension under the *Canada Pension Plan* or the *Quebec Pension Plan* is due. Commence-  
ment,  
disability  
pension

(4) The amount of the reduction in an annual pension is calculated using the formula, Amount of  
reduction

$$0.007 \times A \times B$$

in which,

"A" is the lesser of,

(a) the member's average salary, and

(b) the amount determined under subsection (5), and

"B" is the number of years of the member's credited service for employment on or after the 1st day of January, 1965 in respect of which the member made contributions under the *Canada Pension Plan* or the *Quebec Pension Plan*.

(5) The amount is the average of the Year's Maximum Pensionable Earnings for the year in which the member ceases to be employed in education and for each of the two preceding years. Idem

#### C. Payment of Benefits

78.—(1) No benefit under the plan shall be paid before the administrator receives an application for it in the form provided by the administrator. Application  
for benefit



- Election or direction (2) An election available under the plan or a direction that may be given to the administrator shall be made or given in the form provided by the administrator.
- Multiple pensions 79. No member is entitled to payment of more than one pension under the plan during the same month or other payment period in respect of the member's credited service.
- Commutation of pensions 80. The administrator may pay the commuted value of a pension, other than a disability pension, instead of the pension if the amount of the annual pension is less than the percentage of the Year's Maximum Pensionable Earnings specified under section 51 of the *Pension Benefits Act*, 1987.
- 1987, c. 35
- Deductions from pensions 81.—(1) A person receiving a pension under the pension plan or an allowance under a predecessor Act may direct the administrator to deduct and remit from the pension or allowance on behalf of the person,
- (a) premiums payable under the Ontario Health Insurance Plan by the person;
  - (b) premiums for medical, dental or health-related insurance payable by the person under a contract of group insurance approved by the administrator for the purpose of this section; and
  - (c) premiums payable to the Superannuated Teachers of Ontario Inc.
- Conditions (2) The administrator may impose and require compliance with such conditions as the administrator considers appropriate before acting upon a direction.
- Revocation of direction (3) A person making a direction may revoke it by written notice to the administrator.
- Termination of pension 82. Every pension terminates as of the end of the month in which the event that terminates the pension occurs.

#### D. Administration

- Appeal of decision 83.—(1) A person who is aggrieved by a decision of an employee of the administrator or a committee of the administrator respecting the person's entitlement to, or the amount of, a pension benefit may appeal the decision to the administrator and the administrator shall determine the appeal.
- Idem (2) An appeal shall be made in accordance with the procedures established by the administrator.
- Determination of commuted value 84. The commuted value of a benefit shall not be less than the amount calculated in accordance with the *Recommendations for the Computation of Minimum Transfer Values for Deferred Pensions* and the *Recommendations for the Computation of Minimum Transfer Values for Indexed Pensions* published by the Canadian Institute of Actuaries and shall be calculated using the rate of interest specified by and such actuarial tables as may be adopted by the administrator.
- Calculation of interest 85.—(1) Unless otherwise indicated, interest payable in a year is calculated at the rate that is the weighted average yield of the debentures held by the pension fund as at the 31st day of December in the preceding year and is compounded annually.

(2) Interest payable during 1990 shall be calculated at the rate that is the weighted average yield of the debentures held by the Teachers' Superannuation Fund under the *Teachers' Superannuation Act, 1983* as at the 31st day of December, 1989. Idem, transitional 1983, c. 84

(3) Interest payable in respect of a period before the 31st day of December, 1989 shall be calculated at the fund rate in effect under the *Teachers' Superannuation Act, 1983*. Idem, transitional 1983, c. 84

(4) Interest on contributions shall be calculated at the rate required under the *Pension Benefits Act, 1987* and credited to the member as at the 31st day of December in each year. Interest on contributions 1987, c. 35

(5) Interest is payable on a lump sum payment of the commuted value of a benefit from the effective date of the determination of the commuted value to the date the lump sum is paid. Interest on lump sums

**86.**—(1) At the request of the administrator, a member receiving a pension shall report to the administrator the number of days, if any, that the member is employed in education while receiving the pension. Report re employment in education

(2) If a member does not report within a reasonable time after the request, the administrator shall cease to pay the pension until the report is given. Failure to report

**87.**—(1) This section applies to a person who, before the 17th day of December, 1971, would have been entitled to more than one allowance under *The Teachers' Superannuation Act* or a predecessor thereof but for section 37 of that Act and who received a refund of contributions in lieu of a second allowance. Prior refund re multiple pensions R.S.O. 1970, c. 455

(2) A person who received a refund of contributions in respect of credited service for the person's employment solely for the reason that the person was not entitled to more than one allowance under the existing pension plan is entitled to receive a retirement pension calculated under subsection (4). Entitlement to reinstatement

(3) A person who received a refund of contributions in respect of a survivor pension solely for the reason that the person was not entitled to more than one allowance under the existing pension plan is entitled to receive a survivor pension calculated under subsection (5). Idem

(4) The amount of the person's retirement pension is the amount of the annual retirement pension to which the person would have been entitled immediately before receiving the refund of contributions adjusted for inflation from the date the person received the refund of contributions to the date the person becomes entitled to the pension under this section. Amount of retirement pension

(5) The amount of the person's survivor pension is the amount of the annual survivor pension to which the person would have been entitled immediately before receiving the refund of contributions adjusted for inflation from the date the person received the refund of contributions to the date the person becomes entitled to the pension under this section. Amount of survivor pension

(6) Payment of a pension under this section begins as of the date the person applies to the administrator. Payment of pension

(7) No amount is payable under this section in respect of a period before the 31st day of December, 1989. Idem

## PART IX

## PURCHASE OF CREDIT FOR SERVICE

## A. General

Purchases, general      **88.** The purchase of credited service by a member who applies on or after the 1st day of January, 1992 shall be made in accordance with this Part.

Purchases, transitional  
1983, c. 84      **89.—**(1) The purchase of credited service by a member who applies before the 1st day of January, 1992 shall be made in accordance with sections 7 to 14 of Ontario Regulation 423/84 made under the *Teachers' Superannuation Act, 1983* as those sections read on the 31st day of December, 1989.

Idem      (2) The *Teachers' Superannuation Act, 1983* as it reads on the 31st day of December, 1989 continues to apply for the purpose of determining a purchase of credited service under subsection (1).

Transitional re religious holidays      (3) Section 91 applies with respect to a member's application before the 1st day of January, 1992 in the circumstances described in that section.

Transitional re designated private schools      (4) Section 94 applies with respect to a member's application before the 1st day of January, 1992 in the circumstances described in that section.

Interpretation      (5) For the purpose of calculations required under sections 7 to 14 of Ontario Regulation 423/84, references to the fund rate in that Regulation shall be read as if they were references to the standard interest rate for a period beginning on or after the 31st day of December, 1989.

## B. For Employment in Education

Absences and breaks in service      **90.—**(1) In this section,  
"absence" means a leave of absence, with or without pay, to which a member's employer consents;

"break in service" means a period when a member is not employed in education or is absent from employment without the employer's consent.

Purchase re absence      (2) An active member may purchase credited service for an absence,

(a) taken for the purpose of travel, study, service as a juror, service in political office or participation in a deferred salary leave plan;

(b) taken for the purpose of serving as a member of the Legislative Assembly of Ontario, of the House of Commons of Canada or of the council of a municipality or local board within the meaning of section 1 of the *Municipal Affairs Act*;

R.S.O. 1980,  
c. 303

(c) taken by reason of the member's ill health; or

(d) taken upon the pregnancy of the member, the birth or adoption of the member's child or for the purpose of caring for the member's child under seven years of age.

Purchase re break in service      (3) An active member may purchase credited service for a break in service,

- (a) taken for personal or health reasons approved by the administrator;
- (b) taken upon the pregnancy of the member, for the birth or adoption of the member's child or for the purpose of caring for the member's child under seven years of age; or
- (c) taken for the purpose of serving as a member of the Legislative Assembly of Ontario, of the House of Commons of Canada or of the council of a municipality or local board within the meaning of section 1 of the *Municipal Affairs Act*. R.S.O. 1980, c. 303
- (4) An active member may purchase credited service under this section, Restriction
- (a) if the member was an active member employed in education for a period equal to one school year of full-time employment before beginning the first such absence or break in service; and
- (b) if the member completes seventy days of credited service during the first school year after the member returns from the absence or break in service.
- (5) No member may purchase more than seven years of credited service under this section. Limit on purchase
- (6) Subsection (5) does not apply with respect to an absence for the reason described in clause (2) (c) or a break in service for the reason described in clause (3) (b) but no member may purchase more than two years of credited service in respect of one child or, if more than one child is born or adopted at once, in respect of one such birth or adoption. Idem
- (7) No member may purchase credited service for an absence for the purpose of service in political office if the member is contributing to or is entitled to a pension under another registered pension plan, other than the *Canada Pension Plan* or the *Quebec Pension Plan*, in respect of the service. Idem  
R.S.C. 1985, c. C-8  
R.S.Q. 1977, c. R-9
- (8) An active member who elects to purchase credited service on or before the first anniversary after returning to active membership shall contribute, Amount of contribution
- (a) the sum of the required contributions the member would have made if the member were not absent, based upon the pensionable earnings that the member's employer advises the administrator that the member would have earned; and
- (b) interest thereon from the date each contribution would have been made and ending on the first day of the month in which it is paid.
- (9) A contribution under subsection (8) shall be paid as a lump sum before the third anniversary of the member's return to active membership. Due date
- (10) The contributions under subsection (8) may be paid during the absence or break in service as if no such absence or break in service occurred. Idem
- (11) A member who elects to purchase credited service after the first anniversary of the member's return to active membership or who fails to make a payment before the due date under subsection (9) shall contribute an amount equal to the actuarial cost of the pension improvement at the date of the purchase. Amount of contribution, delayed election



Absence  
during a  
school year

**91.—(1)** An active member may purchase credited service for days that the member is absent from the member's employment if,

- (a) the member is absent for the purpose of observing a religious holiday that is not observed by the employer;
- (b) the employer approves the absence; and
- (c) the member has accumulated at least one year of credited service before the absence.

Amount of  
contribution

(2) The member shall contribute the amount of the member's contribution for each day of absence plus the amount of the corresponding employer's contribution.

Interest  
payable

(3) The member shall pay interest, calculated at the standard rate, on any contribution that is delivered to the employer more than one month after the end of the absence.

Limitation

(4) The member may purchase credited service for an absence described in subsection (1) only during the school year in which it occurs.

For former  
membership

**92.—(1)** This section applies with respect to an active member who previously received a refund of required contributions under the pension plan.

Eligibility

(2) No member may purchase credited service under this section until the member has accumulated, through employment in education, twenty days of credited service in one school year after returning to active membership.

Election  
within one  
year

(3) An active member who elects to purchase credited service on or before the later of the first anniversary of the member's return to active membership and the 1st day of January, 1994 shall contribute the amount previously refunded together with interest thereon from the date the refund was made to the first day of the month in which the contribution is paid, calculated at the standard interest rate in effect on the date the refund was made.

Limit

(4) No member may purchase more days of credited service under subsection (3) than the number of days in respect of which the member received the refund.

Due date

(5) A contribution under subsection (3) shall be paid as a lump sum before the third anniversary of the member's return to active membership.

Required  
contribution

(6) A contribution under subsection (3) shall be considered to be a required contribution.

Election after  
one year

(7) A member who elects to purchase credited service after the deadline referred to in subsection (3) or who fails to make a payment before the deadline in subsection (5) shall contribute an amount equal to the actuarial cost of the pension improvement on the date of the purchase.

Approved  
service  
outside  
Ontario

**93.—(1)** An active member may purchase credited service for a period of teaching or supervisory service outside Ontario if the Minister approved the service before it began.

Eligibility

(2) No member with less than ten years of credited service may make a purchase under this section.

Idem

(3) No member may purchase credited service under this section if the member is entitled to a pension under another registered pension plan,



other than the *Canada Pension Plan* or the *Quebec Pension Plan*, in respect of the service. R.S.C. 1985, c. C-8

R.S.Q. 1977, c. R-9

(4) No member may purchase more than fifteen years of credited service under this section. Limit

(5) The member shall contribute an amount equal to the actuarial cost of the pension improvement on the date of the purchase. Amount of contribution

94.—(1) This section applies to an active member employed in a school within the meaning of section 1 of the *Education Act* who, while employed in a private school designated under a predecessor of this Act, elected before the 1st day of September, 1986 to be excluded from the benefits and obligations of the predecessor Act. Transitional re designated private schools  
R.S.O. 1980, c. 129

(2) An active member may purchase credited service in accordance with subsections 13 (4), (6), (7), (8) and (9) of Ontario Regulation 423/84 as they read on the 31st day of December, 1989, with necessary modifications, for past teaching service in a private school designated under a predecessor of this Act. Purchase

(3) No member shall purchase credited service under this section unless the member was employed on the 1st day of September, 1986 and for at least twenty days in the school year beginning on that date as a teacher in a school within the meaning of the *Education Act*. Restriction

(4) No member is entitled to apply to purchase credited service under this section after the 31st day of December, 1991. Idem

#### C. For other Employment

95.—(1) An active member may purchase credited service for active service and for special war service. For active or special war service

(2) Sections 11, 11b and 13 of Ontario Regulation 423/84 as they read on the 31st day of December, 1989 apply with necessary modifications with respect to a purchase for credit under this section. Idem

96.—(1) A person who is not otherwise a member of the pension plan may purchase credited service for employment before the 1st day of September, 1957 for employment for fewer than twenty hours per week teaching music, art and crafts, physical and health education, home economics, industrial arts and crafts or another special subject. For teaching special subjects

(2) Sections 11a and 11b of Ontario Regulation 423/84 as they read on the 31st day of December, 1989 apply with necessary modifications with respect to a purchase for credit under this section. Idem

97.—(1) An active member may purchase credited service for employment as a provider of teaching or supervisory services, For foreign service as an educator

(a) if the employment is performed in a jurisdiction other than Ontario or in a school maintained by the Government of Canada for children of members of the Armed Forces, for Canada's aboriginal peoples or for inmates of penal institutions;

(b) if the administrator considers that the employment is similar to employment in education; and

- (c) if the member was not a member of the pension plan at the time of the employment.

Eligibility (2) No member with less than ten years of credited service may make a purchase under this section.

Idem (3) No member may purchase credited service under this section if the member is entitled to a pension under another registered pension plan, other than the *Canada Pension Plan* or the *Quebec Pension Plan*, in respect of the employment.

R.S.C. 1985,  
c. C-8

R.S.Q. 1977,  
c. R-9

Limit (4) No member may purchase more than fifteen years of credited service under this section.

Amount of contribution (5) The member shall contribute an amount equal to the actuarial cost of the pension improvement on the date of the purchase.

For other employment **98.**—(1) An active member may purchase credited service for employment not otherwise described in this Part if the member participated in a registered pension plan in respect of the employment and if, after making the purchase, the member will not be entitled to receive a pension benefit under that plan.

Amount of contribution (2) The member shall contribute an amount equal to the actuarial cost of the pension improvement on the date of the purchase.

#### D. Reciprocal Agreements

Reciprocal agreements **99.**—(1) The administrator may enter into an agreement with the authorized representative of another pension plan respecting the terms upon which persons may transfer benefits and contributions between that plan and the pension plan.

Idem (2) A reciprocal agreement must provide that a person transferring benefits and contributions to the pension plan acquires a benefit under the plan based upon the actuarial cost of the benefit on the date of the transfer.

Reciprocal agreements, transitional 1983, c. 84 **100.**—(1) Subject to subsection (2), reciprocal agreements entered into before the 31st day of December, 1989 by the Teachers' Superannuation Commission under section 49 of the *Teachers' Superannuation Act, 1983* are continued and expire on the 31st day of December, 1996.

Idem (2) Reciprocal agreements referred to in subsection (1) do not expire on the 31st day of December, 1996 if, before that date, the reciprocal agreement is amended to include a term described in subsection 99 (2) or if the agreement includes such a term.

#### E. Administration

Application for purchase **101.**—(1) An application to purchase credited service shall be made in a form provided by the administrator and shall be delivered to the administrator.

Idem (2) Despite subsection (1), an application to purchase credited service under subsection 90 (2) or section 91 shall be delivered to the member's employer when the absence begins.

Effective date of purchase **102.** A purchase of credited service is effective on the day the contribution in relation to the purchase is made.

**103.—**(1) A member who is entitled to purchase credited service for a period of employment or a leave of absence may purchase credited service for a part of the employment or leave. Purchase of partial credit

(2) A member may make only one purchase of credited service relating to a continuous period of employment or leave of absence. Single purchase

**104.** Unless otherwise indicated, a contribution under this Part shall be considered to be a voluntary contribution. Voluntary contribution

**105.—**(1) A person entitled to a death benefit in respect of a member who dies before completing a purchase of credited service under this Part may make the contribution on behalf of the deceased member. Contribution by spouse, etc.

(2) A person referred to in subsection (1) ceases to be entitled to make the contribution when a person receives payment of any death benefit in respect of the member. Idem

## PART X

### ADMINISTRATION OF THE PLAN

#### A. General

**106.** The administrator may extend any time limit under the pension plan before or after the expiration of the time if the administrator is satisfied that there are reasonable grounds for the extension, and may give such directions as the administrator considers appropriate consequent upon the extension. Extension of time

**107.—**(1) The administrator shall provide to each member of the pension plan the information and documents required under this Act or any other Act. Provision of information

(2) Despite Part III of the *Freedom of Information and Protection of Privacy Act, 1987*, the administrator shall provide to the Minister all information required to carry out the Minister's duties under this Act. Idem, to Minister 1987, c. 23

(3) The administrator shall provide within a reasonable time to a member, upon written request, all information relating to the member's contributions and entitlements under the pension plan. Idem, to members

**108.** The fiscal year of the pension plan is the twelve-month period that begins on the 1st day of January. Fiscal year

**109.** Actuarial calculations and determinations required under the pension plan shall be made using such actuarial assumptions, principles and methods as may be required or adopted by the administrator. Actuarial calculations

#### B. Pension Fund

**110.** A payment required under the pension plan must be paid from the pension fund. Payments from pension fund

**111.** Moneys in the pension fund that are not required to be paid out must be invested to meet the obligations of the pension plan. Requirement to invest

## PART XI

## DESIGNATION OF PRIVATE SCHOOLS AND ORGANIZATIONS

Private  
schools

**112.**—(1) The Lieutenant Governor in Council by order may designate a school, college, academy or other educational institution as a designated private school for the purposes of the pension plan,

- (a) if it gives instruction equivalent to that given in elementary or secondary schools in Ontario;
- (b) if it is not supported in any way by school taxes or by provincial or municipal grants; and
- (c) if it meets the criteria set out in subsection (3).

Organizations

(2) The Lieutenant Governor in Council by order may designate an organization as a designated organization for the purpose of the pension plan,

- (a) if it provides services related to elementary or secondary education; and
- (b) if it meets the criteria set out in subsection (3).

Criteria

(3) The school, college, academy or other educational institution or the organization,

- (a) must not be operated for profit or gain and any profits must be used to carry out its objects; and
- (b) by its governing body must undertake in writing to make the reports described in subsection (5), to pay the amounts described in subsection (6), and to perform all administrative functions required of an employer for the purposes of the pension plan.

Effective  
date of  
designation

(4) A designation comes into force on the 1st day of September next following the designation.

Reports

(5) The administrator may require a designated private school or designated organization to make annual reports for the purpose of the administration of this Act and the pension plan and to supply such information as to its constitution, operations, teaching staff and otherwise as the administrator may require.

Payments  
under the  
plan

(6) A designated private school or designated organization shall, in accordance with the pension plan, make the employer contributions and collect and remit the contributions by its employees who become active members of the pension plan.

Termination  
of  
designation

**113.**—(1) Upon the recommendation of the Minister, the Lieutenant Governor in Council by order may terminate the designation of a designated private school or a designated organization.

Grounds

- (2) The Minister may recommend the termination of a designation,
- (a) if the designated private school or designated organization, by its governing body, has requested the termination of the designation;
- (b) if the designated private school or designated organization is not complying with its undertakings; or



- (c) if there is a change in the objects or mode of carrying out the objects of the designated private school or designated organization.

(3) Before recommending the termination of a designation, the Minister shall give notice of the proposed recommendation to the governing body and to the employees of the designated private school or designated organization who are active members of the pension plan and shall consider the written submissions, if any, made within a reasonable time by the governing body.

Notice and submissions

(4) An order by the Lieutenant Governor in Council terminating a designation is effective on the 31st day of August following the date of the order.

Effective date

(5) Upon the termination of a designation, the employees of the private school or the organization cease to be eligible to be active members of the pension plan.

Effect of termination of designation

114.—(1) The Lieutenant Governor in Council by order may designate the capacity in which a person must be employed at a board of education in order to be eligible to become an active member in the pension plan.

Designation re capacity

(2) The Lieutenant Governor in Council by order may designate the capacity in which a person must be employed at a private school or organization in order to be eligible to become an active member in the pension plan.

Idem

(3) An order terminating a designation is effective on the 31st day of August next following the date of the termination of designation.

Effective date

115. The designation of a designated private school, designated organization and a designated capacity under the *Teachers' Superannuation Act, 1983* that is in effect on the 31st day of December, 1989 shall have effect as a designation made under this Part.

Designations, transitional 1983, c. 84

## SCHEDULE 2

### TRANSITIONAL VALUATION OF THE PENSION PLAN

1.—(1) In this section and in sections 2 and 3 and subsection 4 (3), “actuarial gain” and “actuarial loss” mean, respectively, the sum, if positive, or the sum, if negative, of,

Initial unfunded liability

- (a) the gain to the pension plan during the period since the review date of the immediately preceding going concern valuation resulting from the difference between actual experience and the experience expected by the actuarial assumptions on which that valuation was based,
- (b) the amount by which the going concern liabilities decrease as a result of an amendment to the plan, and
- (c) the amount by which the going concern liabilities decrease or the going concern assets increase as a result of a change in actuarial methods or assumptions upon which the current going concern valuation is based, as of the review date for a going concern valuation,

but clause (a), (b) or (c) or any combination thereof shall be counted as a negative in the calculation of the sum if,



- (d) the experience of the plan results in a loss rather than a gain,
- (e) an amendment increases the going concern liabilities, or
- (f) a change in actuarial methods or assumptions results in an increase in going concern liabilities or a decrease in going concern assets, as the case may be;

“going concern assets” means the value of the assets of the pension plan, including accrued and receivable income and the present value of future contributions and investment income, determined on the basis of a going concern valuation;

“going concern liabilities” means the present value of the expenses of the pension plan and the accrued and unaccrued benefits of the plan determined on the basis of a going concern valuation;

“going concern unfunded actuarial liability” means the excess of going concern liabilities over going concern assets;

“going concern valuation” means a valuation of assets and liabilities of the pension plan using methods and actuarial assumptions considered by the actuary who valued the plan to be in accordance with generally accepted actuarial principles and practices for the valuation of a continuing pension plan;

“initial valuation” means the going concern valuation of the pension plan as at the 1st day of January, 1990 required by section 3;

“past service unfunded actuarial liability” means the amount of going concern unfunded actuarial liability that results from the provision of benefits with respect to prior employment for which no benefit was provided at the time of the employment or from an amendment to the pension plan that provides benefits for employment prior to the date of the amendment if the employment had not previously been recognized for purposes of the provision of pension benefits;

1987, c. 35 “review date” means the last date of the period under review in a report required under the *Pension Benefits Act*, 1987;

“solvency assets” means the sum determined in accordance with subsections (2) and (3) of,

- (a) the market value of investments held by the pension plan or a value related to the market value by means of an averaging method that stabilizes short-term fluctuations of the market values over a period of not more than five years, plus any cash balances and accrued or receivable income items established before the 1st day of January, 1988,
- (b) the present value of any special payments required to liquidate any past service unfunded actuarial liability established on or after the 1st day of January, 1988,
- (c) the present value of any special payments other than those referred to in clause (b) established on or after the 1st day of January, 1988 that are scheduled for payment within five years after the review date, and
- (d) the present value of future special payments resulting from the initial valuation;

“solvency deficiency” means the excess of the solvency liabilities over the solvency assets;

“solvency gain” means the sum, if positive, of,

- (a) the gain to the pension plan during the period since the review date of the immediately preceding valuation of solvency assets and solvency liabilities resulting from the difference between actual experience and the experience expected by the actuarial assumptions on which that valuation was based, and
- (b) the amount by which the solvency liabilities decrease or the solvency assets increase during the period since the review date of the immediately preceding valuation of solvency assets and solvency liabilities as a result of a change in the actuarial methods or assumptions upon which the current valuation of solvency assets and solvency liabilities is based,

but either of clause (a) or (b) shall be counted as a negative in the calculation of the sum if the experience of the plan results in a loss rather than a gain or if a change in actuarial methods or assumptions results in an increase in solvency liabilities or a decrease in solvency assets, as the case may be;

“solvency liabilities” means an amount that is not less than the liabilities of the pension plan determined as if the plan had been wound up, taking into account liabilities for the adjustment for inflation under the plan and the requirements of section 75 of the *Pension Benefits Act, 1987*. 1987, c. 35

(2) The present values referred to in clauses (b), (c) and (d) of the definition of “solvency assets” in subsection (1) shall be determined on the basis of the assumed interest rate used in determining whether there is a solvency deficiency. Present values re solvency assets

(3) In calculating the solvency assets, if there is no market value for an investment of the pension plan and the investment is issued or guaranteed by a government, the book value of the investment may be used instead of market value. If no market value

(4) This section and sections 2, 3 and 4 prevail over any conflicting provisions of the *Pension Benefits Act, 1987* or of a regulation made under that Act. Conflicting provisions 1987, c. 35

2.—(1) For each month in the period commencing with the 1st day of January, 1990 and ending with the last day of the month in which the initial valuation is approved by the Pension Commission of Ontario, the Treasurer shall pay to the pension fund from the Consolidated Revenue Fund the amount shown for that month in the Table to this section. Interim payments of unfunded liability

(2) The Treasurer may, with the appropriate adjustment for interest, at any time prepay one or more of the outstanding payments shown in the Table. Prepayment

(3) Payments made under subsection (1) or (2) shall be credited against any special payments that are to be made in the same period to liquidate a going concern unfunded actuarial liability disclosed by the initial valuation, and any amount by which the payments made under those subsections are less than the special payments for that period as a result of the initial valuation shall be paid by the Treasurer to the pension fund from the Consolidated Revenue Fund within fifteen months following the month when the initial valuation is approved by the Pension Commission of Ontario. Application of interim payments

Table

## Interim Payments of Unfunded Liability

<i>Item</i>	<i>Date of Payment</i>	<i>Amount of Payment</i>
1.	January 1, 1990	\$15,224,000
2.	February 1, 1990	15,292,000
3.	March 1, 1990	15,360,000
4.	April 1, 1990	15,429,000
5.	May 1, 1990	15,498,000
6.	June 1, 1990	15,567,000
7.	July 1, 1990	15,637,000
8.	August 1, 1990	15,707,000
9.	September 1, 1990	15,777,000
10.	October 1, 1990	15,848,000
11.	November 1, 1990	15,919,000
12.	December 1, 1990	15,990,000
13.	January 1, 1991	16,061,000
14.	February 1, 1991	16,133,000
15.	March 1, 1991	16,205,000
16.	April 1, 1991	16,278,000
17.	May 1, 1991	16,350,000
18.	June 1, 1991	16,424,000
19.	July 1, 1991	16,497,000
20.	August 1, 1991	16,571,000
21.	September 1, 1991	16,645,000
22.	October 1, 1991	16,719,000
23.	November 1, 1991	16,794,000
24.	December 1, 1991	16,869,000
25.	January 1, 1992	16,945,000
26.	February 1, 1992	17,020,000
27.	March 1, 1992	17,096,000
28.	April 1, 1992	17,173,000
29.	May 1, 1992	17,250,000
30.	June 1, 1992	17,327,000
31.	July 1, 1992	17,404,000
32.	August 1, 1992	17,482,000
33.	September 1, 1992	17,560,000
34.	October 1, 1992	17,639,000
35.	November 1, 1992	17,718,000
36.	December 1, 1992	17,797,000

Initial  
valuation

3.—(1) As soon as practicable after the 31st day of December, 1989, the Board shall cause to be prepared a going concern valuation of the pension plan as at the 1st day of January, 1990, and the valuation shall include the adjustment of pensions for inflation under the plan.

Idem

(2) The initial valuation shall,

(a) comply with this section and section 4;

(b) be delivered by the actuary to the Board and to the Minister and the Treasurer, and shall be filed with the Pension Commission of Ontario by the Board only after the Minister and the Treasurer have approved in writing the initial valuation; and

(c) for all purposes of the pension plan, determine the going concern unfunded actuarial liability or surplus of the plan as at the 1st day of January, 1990.

(3) Any going concern unfunded actuarial liability disclosed by the initial valuation shall be liquidated by a series of special payments from the Consolidated Revenue Fund to be made over the forty years commencing on the 1st day of January, 1990.

Liability  
liquidated

(4) Each special payment mentioned in subsection (3) shall be calculated as a constant percentage of the projected future earnings from employment used to calculate pension benefits during the forty years commencing on the 1st day of January, 1990 of all persons who are members of the pension plan on that date and of those who are expected to join the plan during those forty years.

Calculation  
of special  
payments

(5) The present value, as at the 1st day of January, 1990, of the full series of special payments shall equal the amount of the going concern unfunded actuarial liability to be liquidated.

Present value  
of special  
payments

(6) The actuary shall prepare and submit with the initial valuation a schedule showing the dollar amount of each special payment in the first six years of the series and the formula by which the dollar amount of the remaining special payments in the series is determined.

Schedule of  
payments

(7) The Treasurer may, at any time, prepay a part or all of any outstanding special payments or may make additional payments to the pension fund to be applied, with appropriate adjustments for interest, as the Treasurer shall direct to reduce the going concern unfunded actuarial liability disclosed by the initial valuation, and every such payment may be paid out of the Consolidated Revenue Fund.

Prepayments  
and  
additional  
payments

(8) Subject to subsection (4),

Consistent  
assumptions

(a) the projected future earnings from employment used to calculate pension benefits shall be determined using actuarial assumptions consistent with those made in the initial valuation;

(b) the present value of the series of special payments shall be determined using the interest rate used in the initial valuation; and

(c) all other actuarial assumptions made in the determination of the series of special payments shall be, so far as possible, consistent with actuarial assumptions made in the initial valuation.

4.—(1) A going concern valuation of the pension plan made after the initial valuation shall include the value of the outstanding special payments calculated under section 3 that remain to be made to liquidate the going concern unfunded actuarial liability disclosed by the initial valuation, and the actuary shall prepare and submit with the valuation a schedule showing the amount, determined from the formula mentioned in subsection 3 (6), of each remaining special payment for the next six years or for the period of time for which special payments remain to be made, whichever is shorter.

Subsequent  
valuations

(2) An actuarial gain disclosed by a going concern valuation made after the initial valuation shall be applied as prescribed by regulation.

Application  
of actuarial  
gain

(3) For the purpose of determining a solvency gain or solvency deficiency under the pension plan, solvency assets include the present value of future special payments required under section 3.

Special  
payments as  
solvency  
assets

(4) When the special payments made as a result of the initial valuation and the prepayments and additional payments made under subsection 3 (7) have liquidated the going concern unfunded actuarial liability disclosed by the initial valuation, no further payments shall be made, notwithstanding that the period of forty years used in the initial valuation has not expired.

When special  
payments  
cease









# Bill 42

## An Act to amend the Mining Act

The Hon. V. Kerrio  
*Minister of Natural Resources*



*1st Reading*      July 4th, 1989  
*2nd Reading*  
*3rd Reading*  
*Royal Assent*

#### EXPLANATORY NOTE

The Bill empowers the Lieutenant Governor in Council to change the fees, rents and royalties payable under existing natural gas and petroleum production leases issued under Part IV of the Act.

The Bill also provides that two regulations made under section 115 of the Act were applicable, as of the dates they came into force, to leases in force on those dates and to leases renewed thereafter.

**Bill 42**

**1989**

## **An Act to amend the Mining Act**

HER MAJESTY, by and with the advice and consent of the Legislative Assembly of the Province of Ontario, enacts as follows:

**1. Section 115 of the *Mining Act*, being chapter 268 of the Revised Statutes of Ontario, 1980, is amended by adding thereto the following subsection:**

(2) The Lieutenant Governor in Council may provide in a regulation made under clause (1) (a) that the regulation or any provision thereof is applicable to,

Regulations  
may apply to  
existing  
leases

- (a) leases in force on the date the regulation comes into force; and
- (b) leases renewed on or after the date the regulation comes into force.

**2.—(1) Ontario Regulation 1111/80 shall be deemed to have applied since the 23rd day of December, 1980 to,**

Application  
of O. Reg.  
1111/80

- (a) leases in force on that date; and
- (b) leases renewed on or after that date.

**(2) Ontario Regulation 34/82 shall be deemed to have applied since the 29th day of January, 1982 to,**

Application  
of O. Reg.  
34/82

- (a) leases in force on that date; and
- (b) leases renewed on or after that date.

**3. This Act comes into force on the day it receives Royal Assent.**

Commence-  
ment

**4. The short title of this Act is the *Mining Amendment Act*, 1989.**

Short title





CA20N  
XB  
-B56

# Bill 43

## An Act to amend the Courts of Justice Act, 1984

The Hon. I. Scott  
*Attorney General*



*1st Reading*      July 5th, 1989  
*2nd Reading*  
*3rd Reading*  
*Royal Assent*

#### EXPLANATORY NOTE

A recent amendment to the Rules of Civil Procedure eliminated automatic stays of orders (other than orders providing for the payment of money) pending appeals. The Bill would ensure that the automatic stay principle continues to apply as before to orders made under the *Landlord and Tenant Act*.

## Bill 43

1989

## An Act to amend the Courts of Justice Act, 1984

HER MAJESTY, by and with the advice and consent of the Legislative Assembly of the Province of Ontario, enacts as follows:

**1.** The *Courts of Justice Act, 1984*, being chapter 11, is amended by adding thereto the following section:

**143a.**—(1) On the delivery of a notice of appeal from an order, whether final or interlocutory, made under the *Landlord and Tenant Act*, the order is stayed until the disposition of the appeal, but a judge of the court to which the appeal is taken may order otherwise on such terms as are just.

Stays pending  
appeals from  
orders made  
under  
R.S.O. 1980,  
c. 232

(2) Subsection (1) does not apply to a mandatory order or an injunction.

Idem

**2.** This Act shall be deemed to have come into force on the 1st day of July, 1989.

Commence-  
ment

**3.** The short title of this Act is the *Courts of Justice Amendment Act, 1989*.

Short title





# Bill 44

## An Act to amend certain Acts concerning the Sale of Tobacco to Minors

Mr. Sterling



*1st Reading*      July 5th, 1989

*2nd Reading*

*3rd Reading*

*Royal Assent*

### EXPLANATORY NOTES

The purpose of the Bill is to provide for the better enforcement of the provision in the *Minors' Protection Act* prohibiting the sale of tobacco to minors.

The Bill amends the *Minors' Protection Act* to increase the fine for selling tobacco to minors. The minimum fine is increased from \$2 to \$200 and the maximum fine is increased from \$50 to \$5,000. Judges are required to take into account the amount of profit the vendor made from the sale of tobacco in the year preceding the conviction in setting the fine.

The Bill amends the *Retail Sales Tax Act* to require vendors to have an authorization attached to their vendors' permits in order to sell tobacco to consumers. The authorization can be suspended or revoked if a vendor sells tobacco to a minor.

**Bill 44****1989****An Act to amend certain Acts  
concerning the Sale of Tobacco to Minors**

HER MAJESTY, by and with the advice and consent of the Legislative Assembly of the Province of Ontario, enacts as follows:

**1. Subsection 2 (1) of the *Minors' Protection Act*, being chapter 293 of the Revised Statutes of Ontario, 1980, is repealed and the following substituted therefor:**

(1) Every person who contravenes section 1 is guilty of an Offence offence and on conviction is liable to a fine of not less than \$200 and not more than \$5,000.

(1a) In determining the amount of the fine under subsection (1), the judge shall take into account the amount of profit the person made from the sale of tobacco in the year preceding the conviction. Idem

**2.—(1) Section 1 of the *Retail Sales Tax Act*, being chapter 454 of the Revised Statutes of Ontario, 1980, as amended by the Statutes of Ontario, 1982, chapter 36, section 1, 1983, chapter 27, section 1, 1986, chapter 66, section 1 and 1989, chapter 15, section 1, is further amended by adding thereto the following paragraph:**

23a. "tobacco" means tobacco in any form in which it is used or consumed, and includes snuff.

**(2) Section 3 of the said Act, as amended by the Statutes of Ontario, 1986, chapter 66, section 3 and 1989, chapter 15, section 3, is further amended by adding thereto the following subsections:**

(1b) No vendor shall sell tobacco to a consumer unless the permit applied for and issued under subsection (1) authorizes the vendor to sell tobacco and that authorization is in force at the time of that sale. Authority to  
sell tobacco

Idem (1c) A permit issued before the 1st day of January, 1990 is deemed to authorize the vendor to sell tobacco unless it specifically provides otherwise.

Idem (1d) A permit issued after the 31st day of December, 1989 does not authorize the vendor to sell tobacco unless it specifically provides for that authorization.

**(3) Subsection 3 (2) of the said Act is amended by striking out “or” at the end of clause (a) and by adding thereto the following clause:**

(aa) suspend or cancel a vendor’s authorization to sell tobacco if the vendor or any of the vendor’s employees contravenes the *Minors’ Protection Act* or any provision of this Act concerning the sale of tobacco; or

R.S.O. 1980,  
c. 293

. . . . .

**(4) The said section 3 is further amended by adding thereto the following subsection:**

Production of  
authorization (5a) Every vendor shall keep at each location in Ontario where the vendor sells tobacco to consumers proof that the vendor has an authorization under subsection (1b) and shall, upon the request of any purchaser, produce that proof for the purchaser’s inspection.

Commence-  
ment **3. This Act comes into force on the day it receives Royal Assent.**

Short title **4. The short title of this Act is the *Tobacco Sale to Minors Statute Law Amendment Act, 1989*.**

# Bill 45

## An Act to amend the Law Society Act and the Solicitors Act

The Hon. I. Scott  
*Attorney General*



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*1st Reading*      July 6th, 1989  
*2nd Reading*  
*3rd Reading*  
*Royal Assent*

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## EXPLANATORY NOTES

### Part I — Law Society Act

The principal purpose of Part I of the Bill is to provide for the carrying on of the practice of law by corporations. The Bill includes the protection of the solicitor-client privilege where practice is carried on by a law corporation; the imposition of personal liability on shareholders of a law corporation; and provisions for discipline by Convocation if a law corporation fails to comply with the Act. (Sections 1, 5-8, 10-12).

Part I also contains the following amendments to the *Law Society Act*:

1. Obsolete references to certain classes of *ex officio* benchers are deleted. (Subsection 2 (1)).
2. The voting rights of former Attorneys General for Ontario will be restricted to voting in committees that are not considering disciplinary matters. At present, they may vote in Convocation and in all committees. Other life benchers will be given the right to vote in committees but only on non-disciplinary matters. (Section 2).
3. The quorum for all matters before Convocation will be ten benchers. (Section 3).
4. Section 30 of the Act is re-enacted to clarify that the membership of a member or student member who resigns is cancelled. As a result, section 46 of the Act will apply and re-instatement applications will be handled in the same way for members who resign as they are for members whose memberships are cancelled for cause. (Section 4).
5. Section 31 of the Act is re-enacted for the following purposes:
  - i. To provide that the membership of any person who is appointed as a judge of any court in Canada is in abeyance while the person is a judge. At present, judges of other provinces and of the territories may remain as members while they are judges.
  - ii. To delete obsolete references to certain judicial offices.
  - iii. To authorize Convocation to refuse to restore the membership of a judge who is removed, or who resigns, from office because of discreditable conduct.
6. The maximum penalty for the unauthorized practice of law is increased from \$1,000 to \$10,000 and a two-year limitation period is introduced in respect of prosecutions. (Section 9).
7. Convocation will be authorized to make rules prescribing the rate of interest to be paid on money owed to it by members and law corporations. (Subsection 11 (3)).

### Part II — Solicitors Act

Section 37 of the *Solicitors Act* is re-enacted to permit corporations to be awarded counsel fees in proceedings where they are represented by counsel who are salaried employees of the corporation.

**Bill 45**

**1989**

**An Act to amend the  
Law Society Act and the Solicitors Act**

HER MAJESTY, by and with the advice and consent of the Legislative Assembly of the Province of Ontario, enacts as follows:

**PART I**

**LAW SOCIETY ACT**

**1. Section 1 of the *Law Society Act*, being chapter 233 of the Revised Statutes of Ontario, 1980, as amended by the Statutes of Ontario, 1982, chapter 60, section 1, is further amended by adding thereto the following clause:**

(ba) “law corporation” means a corporation that holds a certificate of authorization issued or renewed under section 61b.

**2.—(1) Paragraphs 3, 4, 5, 6 and 8 of subsection 12 (1) of the said Act are repealed and the following substituted therefor:**

3. The Attorney General for Ontario.
4. Every person who has held the office of Attorney General for Ontario.

**(2) Subsections 12 (2) and (3) of the said Act are repealed and the following substituted therefor:**

(2) *Ex officio* benchers under subsection (1) have the rights and privileges prescribed by the rules but, except as provided in subsection (3), may not vote in Convocation or in committees.

Rights and  
privileges

(3) The following voting rights apply:

Voting

1. The Attorney General for Ontario may vote in Convocation and in committees.
2. *Ex officio* benchers under paragraph 4, 7 or 9 of subsection (1) may vote in committees, other than committees appointed for the purposes of section 33, 34, 35, 37, 38 or 38a.

**3. Section 24 of the said Act is repealed and the following substituted therefor:**

Quorum

**24.** Ten benchers present and entitled to vote in Convocation constitute a quorum for the transaction of business.

**4. Sections 30 and 31 of the said Act are repealed and the following substituted therefor:**

Resignation

**30.** Convocation may accept the resignation of a member or student member who has applied in writing to resign whereupon the applicant's membership is cancelled.

Appointment  
as judge

**31.—(1)** The membership of a person is in abeyance while the person holds office as a full-time judge of any court in Canada or as a full-time master of the Supreme Court of Ontario.

Restoration

(2) Upon ceasing to be a judge or master, a person whose membership is in abeyance may apply to the Secretary to have the membership restored and, subject to subsection (3), the Secretary shall restore it.

Exception

(3) Convocation may by order refuse to restore the membership of a person whose membership is in abeyance if, after due investigation by a committee of Convocation, it is found that the person was removed or resigned from the office of judge or master because of,

- (a) conduct that was incompatible with the execution of the office;
- (b) a failure to perform the duties of the office;
- (c) conduct that, if done by a member, would be professional misconduct or conduct unbecoming a barrister and solicitor.

Hearing

(4) A committee appointed for the purposes of subsection (3) shall give the applicant an opportunity to be heard.

(5) Subsections 33 (2) to (13) apply to proceedings under <sup>Idem</sup> this section.

**5. Subsection 33 (1) of the said Act is amended by striking out “or 38” in the first and second lines and inserting in lieu thereof “38 or 38a”.**

**6. The said Act is amended by adding thereto the following section:**

**38a.** If a law corporation is found guilty of any of the matters set out in subsection 61j (1) after due investigation by a committee of Convocation, the committee may by order reprimand it or Convocation may by order cancel its certificate of authorization or may by order suspend its certificate of authorization for a period to be named or may by order reprimand it or may by order make such other disposition as it considers proper in the circumstances. <sup>Law corporations</sup>

**7. Subsection 39 (1) of the said Act is repealed and the following substituted therefor:**

(1) A member, student member or law corporation that has been ordered to be reprimanded by a committee under section 37, 38 or 38a, as the case may be, may appeal the order to Convocation within fifteen days from the day the order of the committee is served on the member, student member or law corporation. <sup>Appeal to Convocation</sup>

**8. Subsection 44 (1) of the said Act is amended,**

- (a) by striking out “30” in the second line and inserting in lieu thereof “31”; and
- (b) by striking out “or 36” in the fourth line and inserting in lieu thereof “36 or 38a”.

**9. Subsection 50 (2) of the said Act is repealed and the following substituted therefor:**

(2) Every person who contravenes subsection (1) is guilty <sup>Offence</sup> of an offence and on conviction is liable to a fine of not more than \$10,000.

(2a) Proceedings shall not be commenced in respect of an <sup>Limitation</sup> offence under subsection (2) after two years after the date on which the offence was, or is alleged to have been, committed.

**10. The said Act is further amended by adding thereto the following sections:**

## LAW CORPORATIONS

Law  
corporations  
authorized

**61a.** A corporation that holds a certificate of authorization may practise as a barrister and solicitor.

Certificate of  
authorization

**61b.**—(1) The Secretary shall issue a certificate of authorization to, or renew the certificate of authorization of, a corporation that applies therefor, if,

1982, c. 4

- (a) it makes the application in accordance with the regulations and pays the fees prescribed by the rules;
- (b) it is a subsisting corporation incorporated under the *Business Corporations Act, 1982*;
- (c) the individuals who will carry on the practice of law on its behalf are members whose rights and privileges are not suspended;
- (d) the legal and beneficial ownership of all of its issued shares are vested in one or more members;
- (e) all of its directors are members whose rights and privileges are not suspended;
- (f) it complies with such other requirements as are set out in the regulations; and
- (g) it has satisfied the Secretary that it meets the requirements set out in clauses (a) to (f).

Requirements  
not met

(2) If the Secretary is not satisfied that a requirement set out in clauses (1) (a) to (f) has been met, the Secretary shall notify the applicant who may meet the requirement or appeal to Convocation if the applicant believes that the requirement has been met.

Appeals

(3) Notice of an appeal to Convocation under subsection (2) shall be filed with the Secretary within fifteen days of the day that the Secretary notifies the applicant that a requirement has not been met.

Hearing

(4) An appeal to Convocation under subsection (2) shall be heard by a committee of Convocation which shall report its findings to Convocation.

Final decision

(5) Upon receipt of the report of a committee referred to in subsection (4), Convocation may by order make such final decision as it considers proper in the circumstances.



(6) Convocation or a committee of Convocation may continue the certificate of authorization of a law corporation pending the disposition of an appeal under subsection (2). Idem

(7) Convocation or a committee of Convocation may permit the Secretary to renew a certificate of authorization of a law corporation that is contravening clause (1) (d) if Convocation or the committee is satisfied that appropriate steps are being taken to remedy the contravention. Idem

**61c.** Sections 36, 40, 41, 42, 43, 57 and 61 apply with necessary modifications to law corporations as if a reference to a member in those sections were a reference to a law corporation and a reference to membership were a reference to a certificate of authorization. Application of certain sections

**61d.**—(1) No person other than a member whose rights and privileges are not suspended may exercise any voting rights attached to shares of a law corporation. Voting of shares

(2) An agreement by a shareholder of a law corporation that vests authority in a person who is not a member to exercise voting rights attached to shares of the corporation is void. Idem

**61e.** Despite subsection 92 (1) of the *Business Corporations Act, 1982*, a shareholder of a corporation while it is a law corporation or while it is acting in contravention of section 50 is liable to persons to whom it is providing the services of a barrister or solicitor to the same extent and in the same manner as a partner in a law firm if there is more than one shareholder or in the same manner as a sole practitioner if there is only one shareholder. Shareholders' liability not limited  
1982, c. 4

**61f.** The liability of an individual carrying on the practice of a barrister and solicitor to persons to whom the individual is providing the services of a barrister or solicitor is not affected by the fact that the practice is carried on as an employee of a law corporation. Employee liability

**61g.** For all purposes of law, a client of a law corporation has the same rights and protections, and a law corporation, its directors, shareholders and employees owe the same duties, with respect to solicitor-client privilege as apply between a client and a member or a member's employee. Solicitor-client privilege

**61h.** This Act, the rules and the regulations apply to a member or student member despite any relationship that the member or student member may have with a law corporation. Application of Act, etc.

Business  
activities

**61i.**—(1) A law corporation shall not engage in any activities that an unincorporated law firm is prohibited from engaging in.

## Partnerships

(2) A law corporation may enter any partnership arrangement for the practice of law that a member may enter.

## Saving

(3) An act of a law corporation, including a transfer of land to or from the corporation, is not invalid by reason only that it contravenes subsection (1).

## Prohibitions

**61j.**—(1) No law corporation shall,

- (a) in the course of practising as a barrister or solicitor, do anything that, if done by a member, would be professional misconduct or conduct unbecoming a barrister and solicitor;
- (b) contravene any provision of this Act;
- (c) provide the services of a barrister or solicitor at any time when it is unable to satisfy the requirements referred to in clauses 61b (1) (b) to (f);
- (d) contravene any condition attached to its certificate of authorization; or
- (e) permit shares to be voted in contravention of section 61d.

## Saving

(2) A law corporation is not contravening clause 61b (1) (d) if the shares of a shareholder who has ceased to be a member are being disposed of in accordance with the regulations or if Convocation has permitted the Secretary to renew the certificate of authorization despite the contravention.

Trusteeships  
permitted  
1987, c. 33

**61k.** Clause 213 (2) (b) of the *Loan and Trust Corporations Act, 1987* does not prevent a law corporation from acting as trustee in respect of services normally provided by members.

References to  
barrister, etc.

**61-l.** A reference in any other Act or any regulation, rule or order made under any other Act to a barrister, solicitor or member shall be deemed to include a reference to a law corporation.

**11.**—(1) Paragraph 13 of subsection 62 (1) of the said Act is repealed and the following substituted therefor:

13. prescribing fees and levies for members, student members and law corporations or any class of members;
- 13a. providing for the payment and remission of the fees and levies prescribed under paragraph 13;
- 13b. exempting any class of members from paying all or any part of a fee or levy prescribed under paragraph 13.

**(2) Paragraph 16 of the said subsection 62 (1) is repealed and the following substituted therefor:**

16. providing for the payment to the Society by a member or law corporation of the cost of any examination or audit of the books, records, accounts and transactions of the member or law corporation.

**(3) Subsection 62 (1) of the said Act, as amended by the Statutes of Ontario, 1982, chapter 60, section 3, is further amended by adding thereto the following paragraph:**

- 16a. requiring the payment of interest on any amount owed to the Society by a member, student member or law corporation and prescribing the interest rate.

**12. Paragraphs 2 and 3 of section 63 of the said Act are repealed and the following substituted therefor:**

2. requiring and prescribing the books, records and accounts to be kept by members and law corporations and providing for exemptions from any such requirements by any class of members;
3. requiring and providing for the examination or audit of the books, records, accounts and transactions of members and law corporations and providing for the filing of the reports of the examiners or auditors with the Society;
- 3a. prescribing requirements that a corporation must satisfy before a certificate of authorization will be issued or renewed, including,
  - i. requirements related to the name of the corporation and to the approval of the name,
  - ii. requirements related to the objects of the corporation;

- 3b. respecting the issue and renewal of certificates of authorization, including,
  - i. procedures to be followed in relation thereto,
  - ii. the manner of proving the matters referred to in subsection 61b (1);
- 3c. permitting the attachment of conditions to a certificate of authorization and prescribing the conditions which may be attached;
- 3d. providing for the periodic expiry of certificates of authorization;
- 3e. respecting the disposition and voting of shares of a shareholder of a law corporation whose rights and privileges as a member are suspended or who has ceased to be a member.

**PART II**

**SOLICITORS ACT**

**13.** Section 37 of the *Solicitors Act*, being chapter 478 of the Revised Statutes of Ontario, 1980, is repealed and the following substituted therefor:

Costs,  
corporate  
counsel

**37.** In a proceeding to which a corporation is a party, costs awarded to the corporation shall not be disallowed or reduced on assessment merely because they relate to a solicitor or counsel who is a salaried employee of the corporation.

**PART III**

**COMMENCEMENT, SHORT TITLE**

Commence-  
ment

**14.—(1)** Subject to subsection (2), this Act comes into force on the day it receives Royal Assent.

Idem

**(2)** Sections 1, 5, 6, 7, 8 and 10, subsections 11 (1) and (2) and section 12 come into force on a day to be named by proclamation of the Lieutenant Governor.

Short title

**15.** The short title of this Act is the *Legal Profession Statute Law Amendment Act, 1989*.







# Bill 45

## An Act to amend the Law Society Act and the Solicitors Act

The Hon. I. Scott  
*Attorney General*



*1st Reading*      July 6th, 1989

*2nd Reading*      June 27th, 1990

*3rd Reading*

*Royal Assent*

*(Reprinted as amended by the Committee of the Whole House)*

## EXPLANATORY NOTES

### Part I — Law Society Act

The principal purpose of Part I of the Bill is to provide for the carrying on of the practice of law by corporations. The Bill includes the protection of the solicitor-client privilege where practice is carried on by a law corporation; the imposition of personal liability on shareholders of a law corporation; and provisions for discipline by Convocation if a law corporation fails to comply with the Act. (Sections 1, 5-8, 10-12).

Part I also contains the following amendments to the *Law Society Act*:

1. Obsolete references to certain classes of *ex officio* benchers are deleted. (Subsection 2 (1)).
2. The voting rights of former Attorneys General for Ontario will be restricted to voting in committees that are not considering disciplinary matters. At present, they may vote in Convocation and in all committees. Other life benchers will be given the right to vote in committees but only on non-disciplinary matters. (Section 2).
3. The quorum for all matters before Convocation will be ten benchers. (Section 3).
4. Section 30 of the Act is re-enacted to clarify that the membership of a member or student member who resigns is cancelled. As a result, section 46 of the Act will apply and re-instatement applications will be handled in the same way for members who resign as they are for members whose memberships are cancelled for cause. (Section 4).
5. Section 31 of the Act is re-enacted for the following purposes:
  - i. To provide that the membership of any person who is appointed as a judge of any court in Canada is in abeyance while the person is a judge. At present, judges of other provinces and of the territories may remain as members while they are judges.
  - ii. To provide that membership of any person appointed to the Ontario Municipal Board or other tribunal named in the regulations is in abeyance while the person is a member of the Board or tribunal.
  - iii. To delete obsolete references to certain judicial offices.
  - iv. To authorize Convocation to refuse to restore the membership of a judge who is removed, or who resigns, from office because of discreditable conduct.
6. The maximum penalty for the unauthorized practice of law is increased from \$1,000 to \$10,000 and a two-year limitation period is introduced in respect of prosecutions. (Section 9).
7. Convocation will be authorized to make rules prescribing the rate of interest to be paid on money owed to it by members and law corporations. (Subsection 11 (3)).

### Part II — Solicitors Act

Section 37 of the *Solicitors Act* is re-enacted to permit counsel fees to be awarded to a party in proceedings where the party is represented by a lawyer who is a salaried employee of the party.

**Bill 45**

**1989**

**An Act to amend the  
Law Society Act and the Solicitors Act**

HER MAJESTY, by and with the advice and consent of the Legislative Assembly of the Province of Ontario, enacts as follows:

**PART I**

**LAW SOCIETY ACT**

**1.** Section 1 of the *Law Society Act*, being chapter 233 of the Revised Statutes of Ontario, 1980, as amended by the Statutes of Ontario, 1982, chapter 60, section 1, is further amended by adding thereto the following clause:

(ba) “law corporation” means a corporation that holds a certificate of authorization issued or renewed under section 61b.

**2.—(1)** Paragraphs 3, 4, 5, 6 and 8 of subsection 12 (1) of the said Act are repealed and the following substituted therefor:

3. The Attorney General for Ontario.
4. Every person who has held the office of Attorney General for Ontario.

**(2)** Subsections 12 (2) and (3) of the said Act are repealed and the following substituted therefor:

(2) *Ex officio* benchers under subsection (1) have the rights and privileges prescribed by the rules but, except as provided in subsection (3), may not vote in Convocation or in committees.

Rights and  
privileges

**(3)** The following voting rights apply:

Voting

1. The Attorney General for Ontario may vote in Convocation and in committees.
2. *Ex officio* benchers under paragraph 4, 7 or 9 of subsection (1) may vote in committees, other than committees appointed for the purposes of section 33, 34, 35, 37, 38 or 38a.

**3. Section 24 of the said Act is repealed and the following substituted therefor:**

Quorum

**24.** Ten benchers present and entitled to vote in Convocation constitute a quorum for the transaction of business.

**4. Sections 30 and 31 of the said Act are repealed and the following substituted therefor:**

Resignation

**30.** Convocation may accept the resignation of a member or student member who has applied in writing to resign whereupon the applicant's membership is cancelled.



Appointment  
to judicial  
office

**31.—(1)** The membership of a person is in abeyance while the person holds office,

- (a) as a full-time judge of any federal, provincial or territorial court or as a full-time master of the Supreme Court of Ontario; or
- (b) as a full-time member of the Ontario Municipal Board or as a full-time member of a tribunal that has a judicial or quasi-judicial function and that is named in the regulations for the purposes of this section.

Restoration


(2) Upon ceasing to hold an office described in subsection (1), a person whose membership is in abeyance may apply to the Secretary to have the membership restored and, subject to subsection (3), the Secretary shall restore it.

Exception

(3) Convocation may by order refuse to restore the membership of a person whose membership is in abeyance if, after due investigation by a committee of Convocation, it is found that the person was removed or resigned from an office described in subsection (1) because of,

- (a) conduct that was incompatible with the execution of the office;
- (b) a failure to perform the duties of the office;



- (c) conduct that, if done by a member, would be professional misconduct or conduct unbecoming a barrister and solicitor. 

(4) A committee appointed for the purposes of subsection (3) shall give the applicant an opportunity to be heard. Hearing

(5) Subsections 33 (2) to (13) apply to proceedings under this section. Idem

**5. Subsection 33 (1) of the said Act is amended by striking out “or 38” in the first and second lines and inserting in lieu thereof “38 or 38a”.**

**6. The said Act is amended by adding thereto the following section:**

**38a.** If a law corporation is found guilty of any of the matters set out in subsection 61j (1) after due investigation by a committee of Convocation, the committee may by order reprimand it or Convocation may by order cancel its certificate of authorization or may by order suspend its certificate of authorization for a period to be named or may by order reprimand it or may by order make such other disposition as it considers proper in the circumstances. Law corporations

**7. Subsection 39 (1) of the said Act is repealed and the following substituted therefor:**

(1) A member, student member or law corporation that has been ordered to be reprimanded by a committee under section 37, 38 or 38a, as the case may be, may appeal the order to Convocation within fifteen days from the day the order of the committee is served on the member, student member or law corporation. Appeal to Convocation

**8. Subsection 44 (1) of the said Act is amended,**

- (a) by striking out “30” in the second line and inserting in lieu thereof “31”; and
- (b) by striking out “or 36” in the fourth line and inserting in lieu thereof “36 or 38a”.

**9. Subsection 50 (2) of the said Act is repealed and the following substituted therefor:**

(2) Every person who contravenes subsection (1) is guilty of an offence and on conviction is liable to a fine of not more than \$10,000. Offence

Limitation

(2a) Proceedings shall not be commenced in respect of an offence under subsection (2) after two years after the date on which the offence was, or is alleged to have been, committed.

**10. The said Act is further amended by adding thereto the following sections:**

#### LAW CORPORATIONS

Law  
corporations  
authorized

**61a.** A corporation that holds a certificate of authorization may practise as a barrister and solicitor.

Certificate of  
authorization

**61b.—(1)** The Secretary shall issue a certificate of authorization to, or renew the certificate of authorization of, a corporation that applies therefor, if,

1982, c. 4

- (a) it makes the application in accordance with the regulations and pays the fees prescribed by the rules;
- (b) it is a subsisting corporation incorporated under the *Business Corporations Act, 1982*;
- (c) the individuals who will carry on the practice of law on its behalf are members whose rights and privileges are not suspended;
- (d) the legal and beneficial ownership of all of its issued shares are vested in one or more members;
- (e) all of its directors are members whose rights and privileges are not suspended;
- (f) it complies with such other requirements as are set out in the regulations; and
- (g) it has satisfied the Secretary that it meets the requirements set out in clauses (a) to (f).

Requirements  
not met

(2) If the Secretary is not satisfied that a requirement set out in clauses (1) (a) to (f) has been met, the Secretary shall notify the applicant who may meet the requirement or appeal to Convocation if the applicant believes that the requirement has been met.

Appeals

(3) Notice of an appeal to Convocation under subsection (2) shall be filed with the Secretary within fifteen days of the day that the Secretary notifies the applicant that a requirement has not been met.

(4) An appeal to Convocation under subsection (2) shall be heard by a committee of Convocation which shall report its findings to Convocation. Hearing

(5) Upon receipt of the report of a committee referred to in subsection (4), Convocation may by order make such final decision as it considers proper in the circumstances. Final decision

(6) Convocation or a committee of Convocation may continue the certificate of authorization of a law corporation pending the disposition of an appeal under subsection (2). Idem

(7) Convocation or a committee of Convocation may permit the Secretary to renew a certificate of authorization of a law corporation that is contravening clause (1) (d) if Convocation or the committee is satisfied that appropriate steps are being taken to remedy the contravention. Idem

**61c.** Sections 36, 40, 41, 42, 43, 57 and 61 apply with necessary modifications to law corporations as if a reference to a member in those sections were a reference to a law corporation and a reference to membership were a reference to a certificate of authorization. Application of certain sections

**61d.**—(1) No person other than a member whose rights and privileges are not suspended may exercise any voting rights attached to shares of a law corporation. Voting of shares

(2) An agreement by a shareholder of a law corporation that vests authority in a person who is not a member to exercise voting rights attached to shares of the corporation is void. Idem

**61e.** Despite subsection 92 (1) of the *Business Corporations Act, 1982*, a shareholder of a corporation while it is a law corporation or while it is acting in contravention of section 50 is liable to persons to whom it is providing the services of a barrister or solicitor to the same extent and in the same manner as a partner in a law firm if there is more than one shareholder or in the same manner as a sole practitioner if there is only one shareholder. Shareholders' liability not limited  
1982, c. 4

**61f.** The liability of an individual carrying on the practice of a barrister and solicitor to persons to whom the individual is providing the services of a barrister or solicitor is not affected by the fact that the practice is carried on as an employee of a law corporation. Employee liability

**61g.** For all purposes of law, a client of a law corporation has the same rights and protections, and a law corporation, its directors, shareholders and employees owe the same duties, Solicitor-client privilege

with respect to solicitor-client privilege as apply between a client and a member or a member's employee.

Application  
of Act, etc.

**61h.** This Act, the rules and the regulations apply to a member or student member despite any relationship that the member or student member may have with a law corporation.

Business  
activities

**61i.**—(1) A law corporation shall not engage in any activities that an unincorporated law firm is prohibited from engaging in.

Partnerships

(2) A law corporation may enter any partnership arrangement for the practice of law that a member may enter.

Saving

(3) An act of a law corporation, including a transfer of land to or from the corporation, is not invalid by reason only that it contravenes subsection (1).

Prohibitions

**61j.**—(1) No law corporation shall,

- (a) in the course of practising as a barrister or solicitor, do anything that, if done by a member, would be professional misconduct or conduct unbecoming a barrister and solicitor;
- (b) contravene any provision of this Act;
- (c) provide the services of a barrister or solicitor at any time when it is unable to satisfy the requirements referred to in clauses 61b (1) (b) to (f);
- (d) contravene any condition attached to its certificate of authorization; or
- (e) permit shares to be voted in contravention of section 61d.

Saving

(2) A law corporation is not contravening clause 61b (1) (d) if the shares of a shareholder who has ceased to be a member are being disposed of in accordance with the regulations or if Convocation has permitted the Secretary to renew the certificate of authorization despite the contravention.

Trusteeships  
permitted  
1987, c. 33

**61k.** Clause 213 (2) (b) of the *Loan and Trust Corporations Act, 1987* does not prevent a law corporation from acting as trustee in respect of services normally provided by members.

References to  
barrister, etc.

**61-l.** A reference in any other Act or any regulation, rule or order made under any other Act to a barrister, solicitor or



member shall be deemed to include a reference to a law corporation.

**11.—(1) Paragraph 13 of subsection 62 (1) of the said Act is repealed and the following substituted therefor:**

13. prescribing fees and levies for members, student members and law corporations or any class of members;
- 13a. providing for the payment and remission of the fees and levies prescribed under paragraph 13;
- 13b. exempting any class of members from paying all or any part of a fee or levy prescribed under paragraph 13.

**(2) Paragraph 16 of the said subsection 62 (1) is repealed and the following substituted therefor:**

16. providing for the payment to the Society by a member or law corporation of the cost of any examination or audit of the books, records, accounts and transactions of the member or law corporation.

**(3) Subsection 62 (1) of the said Act, as amended by the Statutes of Ontario, 1982, chapter 60, section 3, is further amended by adding thereto the following paragraph:**

- 16a. requiring the payment of interest on any amount owed to the Society by a member, student member or law corporation and prescribing the interest rate.

**12. Paragraphs 2 and 3 of section 63 of the said Act are repealed and the following substituted therefor:**

2. requiring and prescribing the books, records and accounts to be kept by members and law corporations and providing for exemptions from any such requirements by any class of members;
- 2a. naming for the purposes of section 31 tribunals that have a judicial or quasi-judicial function;
3. requiring and providing for the examination or audit of the books, records, accounts and transactions of members and law corporations and providing for the filing of the reports of the examiners or auditors with the Society;



- 3a. prescribing requirements that a corporation must satisfy before a certificate of authorization will be issued or renewed, including,
  - i. requirements related to the name of the corporation and to the approval of the name,
  - ii. requirements related to the objects of the corporation;
- 3b. respecting the issue and renewal of certificates of authorization, including,
  - i. procedures to be followed in relation thereto,
  - ii. the manner of proving the matters referred to in subsection 61b (1);
- 3c. permitting the attachment of conditions to a certificate of authorization and prescribing the conditions which may be attached;
- 3d. providing for the periodic expiry of certificates of authorization;
- 3e. respecting the disposition and voting of shares of a shareholder of a law corporation whose rights and privileges as a member are suspended or who has ceased to be a member.

PART II

SOLICITORS ACT

**13.** Section 37 of the *Solicitors Act*, being chapter 478 of the Revised Statutes of Ontario, 1980, is repealed and the following substituted therefor:



**37.** Costs awarded to a party in a proceeding shall not be disallowed or reduced on assessment merely because they relate to a solicitor or counsel who is a salaried employee of the party.



PART III

COMMENCEMENT, SHORT TITLE

**14.—(1)** Subject to subsection (2), this Act comes into force on the day it receives Royal Assent.

Costs,  
salaried  
counsel

Commence-  
ment

(2) Sections 1, 5, 6, 7, 8 and 10, subsections 11 (1) and (2) <sup>Idem</sup> and section 12 come into force on a day to be named by proclamation of the Lieutenant Governor.

**15.** The short title of this Act is the *Legal Profession Statute* <sup>Short title</sup> *Law Amendment Act, 1990*.



# Bill 45

*(Chapter 8  
Statutes of Ontario, 1990)*

## **An Act to amend the Law Society Act and the Solicitors Act**

The Hon. I. Scott  
*Attorney General*



<i>1st Reading</i>	July 6th, 1989
<i>2nd Reading</i>	June 27th, 1990
<i>3rd Reading</i>	June 28th, 1990
<i>Royal Assent</i>	June 28th, 1990





Bill 45

1989

**An Act to amend the  
Law Society Act and the Solicitors Act**

HER MAJESTY, by and with the advice and consent of the Legislative Assembly of the Province of Ontario, enacts as follows:

**PART I**

**LAW SOCIETY ACT**

**1.** Section 1 of the *Law Society Act*, being chapter 233 of the Revised Statutes of Ontario, 1980, as amended by the Statutes of Ontario, 1982, chapter 60, section 1, is further amended by adding thereto the following clause:

(ba) “law corporation” means a corporation that holds a certificate of authorization issued or renewed under section 61b.

**2.—(1)** Paragraphs 3, 4, 5, 6 and 8 of subsection 12 (1) of the said Act are repealed and the following substituted therefor:

3. The Attorney General for Ontario.
4. Every person who has held the office of Attorney General for Ontario.

**(2)** Subsections 12 (2) and (3) of the said Act are repealed and the following substituted therefor:

(2) *Ex officio* benchers under subsection (1) have the rights and privileges prescribed by the rules but, except as provided in subsection (3), may not vote in Convocation or in committees.

Rights and  
privileges

(3) The following voting rights apply:

Voting

1. The Attorney General for Ontario may vote in Convocation and in committees.
2. *Ex officio* benchers under paragraph 4, 7 or 9 of subsection (1) may vote in committees, other than committees appointed for the purposes of section 33, 34, 35, 37, 38 or 38a.

**3. Section 24 of the said Act is repealed and the following substituted therefor:**

Quorum

**24.** Ten benchers present and entitled to vote in Convocation constitute a quorum for the transaction of business.

**4. Sections 30 and 31 of the said Act are repealed and the following substituted therefor:**

Resignation

**30.** Convocation may accept the resignation of a member or student member who has applied in writing to resign whereupon the applicant's membership is cancelled.

Appointment  
to judicial  
office

**31.—(1)** The membership of a person is in abeyance while the person holds office,

- (a) as a full-time judge of any federal, provincial or territorial court or as a full-time master of the Supreme Court of Ontario; or
- (b) as a full-time member of the Ontario Municipal Board or as a full-time member of a tribunal that has a judicial or quasi-judicial function and that is named in the regulations for the purposes of this section.

Restoration

(2) Upon ceasing to hold an office described in subsection (1), a person whose membership is in abeyance may apply to the Secretary to have the membership restored and, subject to subsection (3), the Secretary shall restore it.

Exception

(3) Convocation may by order refuse to restore the membership of a person whose membership is in abeyance if, after due investigation by a committee of Convocation, it is found that the person was removed or resigned from an office described in subsection (1) because of,

- (a) conduct that was incompatible with the execution of the office;
- (b) a failure to perform the duties of the office;

- (c) conduct that, if done by a member, would be professional misconduct or conduct unbecoming a barrister and solicitor.

(4) A committee appointed for the purposes of subsection (3) shall give the applicant an opportunity to be heard. Hearing

(5) Subsections 33 (2) to (13) apply to proceedings under this section. Idem

**5. Subsection 33 (1) of the said Act is amended by striking out “or 38” in the first and second lines and inserting in lieu thereof “38 or 38a”.**

**6. The said Act is amended by adding thereto the following section:**

**38a.** If a law corporation is found guilty of any of the matters set out in subsection 61j (1) after due investigation by a committee of Convocation, the committee may by order reprimand it or Convocation may by order cancel its certificate of authorization or may by order suspend its certificate of authorization for a period to be named or may by order reprimand it or may by order make such other disposition as it considers proper in the circumstances. Law corporations

**7. Subsection 39 (1) of the said Act is repealed and the following substituted therefor:**

(1) A member, student member or law corporation that has been ordered to be reprimanded by a committee under section 37, 38 or 38a, as the case may be, may appeal the order to Convocation within fifteen days from the day the order of the committee is served on the member, student member or law corporation. Appeal to Convocation

**8. Subsection 44 (1) of the said Act is amended,**

- (a) by striking out “30” in the second line and inserting in lieu thereof “31”; and
- (b) by striking out “or 36” in the fourth line and inserting in lieu thereof “36 or 38a”.

**9. Subsection 50 (2) of the said Act is repealed and the following substituted therefor:**

(2) Every person who contravenes subsection (1) is guilty of an offence and on conviction is liable to a fine of not more than \$10,000. Offence

Limitation

(2a) Proceedings shall not be commenced in respect of an offence under subsection (2) after two years after the date on which the offence was, or is alleged to have been, committed.

**10. The said Act is further amended by adding thereto the following sections:**

#### LAW CORPORATIONS

Law  
corporations  
authorized

**61a.** A corporation that holds a certificate of authorization may practise as a barrister and solicitor.

Certificate of  
authorization

**61b.—(1)** The Secretary shall issue a certificate of authorization to, or renew the certificate of authorization of, a corporation that applies therefor, if,

- (a) it makes the application in accordance with the regulations and pays the fees prescribed by the rules;
- (b) it is a subsisting corporation incorporated under the *Business Corporations Act, 1982*;
- (c) the individuals who will carry on the practice of law on its behalf are members whose rights and privileges are not suspended;
- (d) the legal and beneficial ownership of all of its issued shares are vested in one or more members;
- (e) all of its directors are members whose rights and privileges are not suspended;
- (f) it complies with such other requirements as are set out in the regulations; and
- (g) it has satisfied the Secretary that it meets the requirements set out in clauses (a) to (f).

Requirements  
not met

(2) If the Secretary is not satisfied that a requirement set out in clauses (1) (a) to (f) has been met, the Secretary shall notify the applicant who may meet the requirement or appeal to Convocation if the applicant believes that the requirement has been met.

Appeals

(3) Notice of an appeal to Convocation under subsection (2) shall be filed with the Secretary within fifteen days of the day that the Secretary notifies the applicant that a requirement has not been met.



(4) An appeal to Convocation under subsection (2) shall be heard by a committee of Convocation which shall report its findings to Convocation. Hearing

(5) Upon receipt of the report of a committee referred to in subsection (4), Convocation may by order make such final decision as it considers proper in the circumstances. Final decision

(6) Convocation or a committee of Convocation may continue the certificate of authorization of a law corporation pending the disposition of an appeal under subsection (2). Idem

(7) Convocation or a committee of Convocation may permit the Secretary to renew a certificate of authorization of a law corporation that is contravening clause (1) (d) if Convocation or the committee is satisfied that appropriate steps are being taken to remedy the contravention. Idem

**61c.** Sections 36, 40, 41, 42, 43, 57 and 61 apply with necessary modifications to law corporations as if a reference to a member in those sections were a reference to a law corporation and a reference to membership were a reference to a certificate of authorization. Application of certain sections

**61d.**—(1) No person other than a member whose rights and privileges are not suspended may exercise any voting rights attached to shares of a law corporation. Voting of shares

(2) An agreement by a shareholder of a law corporation that vests authority in a person who is not a member to exercise voting rights attached to shares of the corporation is void. Idem

**61e.** Despite subsection 92 (1) of the *Business Corporations Act, 1982*, a shareholder of a corporation while it is a law corporation or while it is acting in contravention of section 50 is liable to persons to whom it is providing the services of a barrister or solicitor to the same extent and in the same manner as a partner in a law firm if there is more than one shareholder or in the same manner as a sole practitioner if there is only one shareholder. Shareholders' liability not limited  
1982, c. 4

**61f.** The liability of an individual carrying on the practice of a barrister and solicitor to persons to whom the individual is providing the services of a barrister or solicitor is not affected by the fact that the practice is carried on as an employee of a law corporation. Employee liability

**61g.** For all purposes of law, a client of a law corporation has the same rights and protections, and a law corporation, its directors, shareholders and employees owe the same duties, Solicitor-client privilege



with respect to solicitor-client privilege as apply between a client and a member or a member's employee.

Application  
of Act, etc.

**61h.** This Act, the rules and the regulations apply to a member or student member despite any relationship that the member or student member may have with a law corporation.

Business  
activities

**61i.**—(1) A law corporation shall not engage in any activities that an unincorporated law firm is prohibited from engaging in.

Partnerships

(2) A law corporation may enter any partnership arrangement for the practice of law that a member may enter.

Saving

(3) An act of a law corporation, including a transfer of land to or from the corporation, is not invalid by reason only that it contravenes subsection (1).

Prohibitions

**61j.**—(1) No law corporation shall,

- (a) in the course of practising as a barrister or solicitor, do anything that, if done by a member, would be professional misconduct or conduct unbecoming a barrister and solicitor;
- (b) contravene any provision of this Act;
- (c) provide the services of a barrister or solicitor at any time when it is unable to satisfy the requirements referred to in clauses 61b (1) (b) to (f);
- (d) contravene any condition attached to its certificate of authorization; or
- (e) permit shares to be voted in contravention of section 61d.

Saving

(2) A law corporation is not contravening clause 61b (1) (d) if the shares of a shareholder who has ceased to be a member are being disposed of in accordance with the regulations or if Convocation has permitted the Secretary to renew the certificate of authorization despite the contravention.

Trusteeships  
permitted  
1987, c. 33

**61k.** Clause 213 (2) (b) of the *Loan and Trust Corporations Act, 1987* does not prevent a law corporation from acting as trustee in respect of services normally provided by members.

References to  
barrister, etc.

**61-l.** A reference in any other Act or any regulation, rule or order made under any other Act to a barrister, solicitor or

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3. requiring and providing for the examination or audit of the books, records, accounts and transactions of members and law corporations and providing for the filing of the reports of the examiners or auditors with the Society;

- 3a. prescribing requirements that a corporation must satisfy before a certificate of authorization will be issued or renewed, including,
  - i. requirements related to the name of the corporation and to the approval of the name,
  - ii. requirements related to the objects of the corporation;
- 3b. respecting the issue and renewal of certificates of authorization, including,
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  - ii. the manner of proving the matters referred to in subsection 61b (1);
- 3c. permitting the attachment of conditions to a certificate of authorization and prescribing the conditions which may be attached;
- 3d. providing for the periodic expiry of certificates of authorization;
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## PART II

### SOLICITORS ACT

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salaried  
counsel

**37.** Costs awarded to a party in a proceeding shall not be disallowed or reduced on assessment merely because they relate to a solicitor or counsel who is a salaried employee of the party.

## PART III

### COMMENCEMENT, SHORT TITLE

Commence-  
ment

**14.—(1)** Subject to subsection (2), this Act comes into force on the day it receives Royal Assent.

(2) Sections 1, 5, 6, 7, 8 and 10, subsections 11 (1) and (2) <sup>Idem</sup> and section 12 come into force on a day to be named by proclamation of the Lieutenant Governor.

**15.** The short title of this Act is the *Legal Profession Statute* <sup>Short title</sup> *Law Amendment Act, 1990*.















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